101ST CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 101-485
Part 1

AMERICANS WITH DISABILITIES ACT OF 1990

MAY 14, 1990.—Continued to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ANDERSON, from the Committee on Public Works and Transportation, submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany H.R. 2273]

[Including cost estimate of the Congressional Budget Office]

The Committee on Public Works and Transportation, to whom was referred the bill (H.R. 2273) to establish a clear and comprehensive prohibition of discrimination on the basis of disability, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Americans with Disabilities Act of 1990".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

TITLE II—PUBLIC SERVICES

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

TITLE IV—TELECOMMUNICATIONS RELAY SERVICE

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architecural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) PURPOSE.—It is the purpose of this Act—

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards against discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including its power to enforce the fourteenth amendment and to regulate commence, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

SEC. 3. DEFINITIONS.

As used in this Act, the following definitions apply:

(1) AUXILIARY AIDS AND SERVICE.—The term "auxiliary aids and services" includes—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) DISABILITY.—The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such impairment; or

(C) being regarded as having such an impairment.

(3) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

TITLE I—EMPLOYMENT

SEC. 101. DEFINITIONS.

As used in this title, the following definitions apply:

(1) COMMISSION.—The term "Commission" means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4).

(2) COVERED ENTITY.—The term "covered entity" means an employer, employment agency, labor organization, or joint labor-management committee.

(3) EMPLOYEE.—The term "employee" means an individual employed by an employer.

(4) EMPLOYER.—

(A) IN GENERAL.—The term "employer" means a persion engaged in an industry affecting commerce who has 15 or more employee for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person; except that, for 2 years following the effective date of this title, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) EXCEPTIONS.—The term "employer" does not include—

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(5) ILLEGAL DRUG.—The term "illegal drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), the possession or distribution of which is unlawful under such Act. The term "illegal drug" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by this Act.

(6) PERSON, ETC.—The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce" have the same meaning such terms have in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(7) QUALIFIED INDIVIDUAL WITH A DISABILITY.—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

(8) REASONABLE ACCOMMODATION.—The term "reasonable accommodation" includes—

(A) making existing facilities used by employers readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(9) UNDUE HARDSHIP.—

(A) IN GENERAL.—The term "undue hardship" means an action requiring significant difficulty or expense.

(B) DETERMINATION.—In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include—

(i) the overall size of the business of a covered entity with respect to the number of employees, number and type of facilities, and the size of the budget;

(ii) the type of operation maintained by the covered entity, including the composition and structure of the workforce of such entity; and

(iii) the nature and cost of the accommodation needed under this Act.

SEC. 102. DISCRIMINATION.

(a) GENERAL RULE.—No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring or discharge of employees, employee compensation, advancement, job training, and other terms, conditions, and privileges of employment.

(b) CONSTRUCTION.—As used in subsection (a), the term "discrimination" includes—

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a qualified applicant or employee with a disability to the discrimination prohibited by this title (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration—

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5) not making reasonable accommodations to the known physical or mental limitations of a qualified individual who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity;

(6) denying employment opportunities to a job applicant or employee who is a qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(7) using employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(8) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test accurately reflects the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) MEDICAL EXAMINATIONS AND INQUIRIES.—

(1) IN GENERAL.—The prohibition against discrimination as referred to in subsection (a) shall include medial examinations and inquiries.

(2) PREEMPLOYMENT.—

(A) PROHIBITED EXAMINATION OR INQUIRY.—Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant or employee as to whether such applicant or employee is an individual with a disability or as to the nature or severity of such disability.

(B) ACCEPTABLE INQUIRY.—A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

(3) EMPLOYMENT ENTRANCE EXAMINATION.—A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if—

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that—

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this Act shall be provided relevant information on request; and

(C) the results of such physical examination are used only in accordance with this title.

(4) EXAMINATION AND INQUIRY.—

(A) PROHIBITED EXAMINATIONS AND INQUIRIES.—A covered entity shall not conduct or require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) ACCEPTABLE INQUIRIES.—A covered entity may make inquiries into the ability of an employee to perform job-related functions.

SEC. 103. DEFENSES.

(a) IN GENERAL.—It may be a defense to a charge of discrimination under this Act that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accomodation.

(b) QUALIFICATION STANDARDS.—The term "qualification standards" may include a requirement that an individual with a currently contagious disease or infection shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) RELIGIOUS ENTITIES.—

(1) IN GENERAL.—This title shall not prohibit a religious corporatoin, association, educational institution, or society from giving preference in employment to individuals or a particular religion to perform work connected with the carry-

ing on by such corporation, association, educational institution, or society of its activities.

(2) QUALIFICATION STANDARD.—Under this title, a religious organization may require, as a qualification standard to employment, that all applicants and employees conform to the religious tenets of such organization.

SEC. 104. ILLEGAL DRUGS AND ALCOHOL.

(a) QUALIFIED INDIVIDUAL WITH A DISABILITY.—For purposes of this title, the term "qualified individual with a disability" does not include any employee or applicant who is a current user of illegal drugs, except that an individual who is otherwise handicapped shall not be excluded from the protections of this Act if such individual also uses or is also addicted to drugs.

(b) AUTHORITY OF COVERED ENTITY.—A covered entity—

(1) may prohibit the useof alcohol or illegal drugs at the workplace by all employees;

(2) may require that employees shall not be under the influence of alcohol or illegal drugs at the workplace;

(3) may require that employees behave in conformance with the requirements established under the Drug-Free Workplace of 1988 (41 U.S.C. 701 et seq.) and that transportation employees meet requirements established by the Secretary of Transportation with respect to drugs and alcohol; and

(4) may hold an employee who is a drug user or alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee.

(c) DRUG TESTING.—

(1) IN GENERAL.—For purposes of this title, a test to determine the use of illegal drugs shall not be considered a medical examination.

(2) CONSTRUCTION.—Nothing in this title shall be construed to encourage, prohibit, or authorize the conducting of drug testing of job applicants or employees or making employment decisions based on such test results.

SEC. 105. POSTING NOTICES.

Every employer, employment agency, labor organization, or joint labor-management committee covered under this title shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this Act, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10).

SEC. 106. REGULATIONS.

Not later than 1 year after the date of enactment of this Act, the Commission shall issue regulations in an accessible format to carry out this title in accordance with subchapter II of chapter 5 of title 5, United States Code.

SEC. 107. ENFORCEMENT.

The remedies and procedures set forth in sections 706, 707, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5, 2000e-6, 2000e-8, and 2000e-9) shall be available, with respect to the Commission or any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of any provisions of this Act, or regulations promulgated under section 106, concerning employment.

SEC. 108. EFFECTIVE DATE.

This title shall become effective 24 months after the date of the enactment of this Act.

TITLE II—PUBLIC SERVICES

SEC. 201. DEFINITIONS.

As used in this title—

(1) DEMAND RESPONSIVE SYSTEM.—The term "demand responsive system" means any system of providing public transportation which is not a fixed route system.

(2) FIXED ROUTE SYSTEM.—The term "fixed route system" means a system of providing public transporttion on which a vehicle is operate along a prescribed route according to a fixed schedule.

(3) OPERATES —The term "operates", as used with respect to a fixed route system or demand responsive system, includes operation of such system by a

person under a contractual or other arrangement or relationship with a public entity.

(4) PUBLIC ENTITY.—The term "public entity" means a department, agency, special purpose district, or other instrumentality of a State or local government.

(5) PUBLIC SCHOOL TRANSPORTATION —The term "public school transportation" means transportation by schoolbus vehicles of schoolchildren, personnel, and equipment to and from a public elementary or secondary school and school-related activities.

(6) PUBLIC TRANSPORTATION.—The term "public transportation" means transportation (other than public school transportation), by bus, rail, or by any other conveyance (other than aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(7) QUALIFIED INDIVIDUAL WITH A DISABILITY.—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, and practices, the removal of architectural communication, and transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

(8) SECRETARY.—The term "Secretary" means the Secretary of Transportation.

SEC. 202. PROHIBITION AGAINST DISCRIMINATION.

Subject to the provisions of this title, no qualified individual with a disability shall, by means of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity or be subjected to discrimination by a public entity.

SEC. 203. PUBLIC ENTITIES OPERATING FIXED ROUTE SYSTEMS.

(a) PURCHASE AND LEASE OF NEW VEHICLES.—It shall be considered discrimination for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system to purchase or rapid rail vehicle, a new light rail vehicle, or any other new vehicle to be used on such system if the solicitation for such purchase or lease is made after the 30th day following the effective date of this subsection and if such bus, rail vehicle, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) PURCHASE AND LEASE OF USED VEHICLES.—Subject to subsection (c)(1), it shall be considered discrimination for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system to purchase or lease, after the 30th day following the effective date of this subsection, a used vehicle for use on such system unless such entity makes demonstrated good faith efforts to purchase or lease a used vehicle for use on such system that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) REMANUFACTURED VEHICLES.—

(1) GENERAL RULE.—Except as provided in paragraph (2), it shall be considered discrimination for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system—

(A) to manufacture a vehicle for use on such system so as to extend its usable life for 5 years or more, which remanufacture begins) or for which the solicitation is made) after the 30th day following the effective date of this subsection; or

(B) to purchase or lease for use on such system a remanufactured vehicle which has been remanufactured so as to extend its usable life for 5 years or more, which purchase or lease occurs after such 30th day and during the period in which the usable life is extended;

unless after remanufacture, the vehicle is, to the maximum extent feasible, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) EXCEPTION FOR HISTORIC VEHICLES —

(A) GENERAL RULE.—If a public entity operates a fixed route system any segment of which is included on the National Register of Historic Places and if making a vehicle of historic character to be used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necesary to meet the requirements of para-

graph (1) and which do not significantly alter the historic character of such vehicle.

(B) VEHICLES OF HISTORIC CHARACTER DEFINED BY REGULATIONS.—For purposes of this paragraph and section 209(b), a vehicle of historic character shall be defined by the regulations issued by the Secretary to carry out this subsection.

SEC. 204. PARATRANSIT AS A COMPLEMENT TO FIXED ROUTE SERVICE.

(a) GENERAL RULE.—It shall be considered discrimination for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system (other than a system which provides solely commuter bus service or commuter rail service) to fail to provide, in accordance with this section, paratransit and other special transportation services to individuals with disabilities, including individuals who use wheelchairs, that are sufficient to provide to such individuals a level of service (1) which is comparable to the level of public transportation services provided to individuals without disabilities using such system; or (2) in the case of response time, which is comparable, to the extent practicable, to the level of public transportation services provided to individuals without disabilities using such system.

(b) ISSUANCE OF REGULATIONS.—Not later than 1 year after the effective date of this subsection, the Secretary shall issue final regulations to carry out this section.

(c) REQUIRED CONTENTS OF REGULATIONS.—

(1) ELIGIBLE RECIPIENTS OF SERVICE.—The regulations issued under this section shall require each public entity which operates a fixed route system to provide the paratransit and other special transportation services required under this section—

(A)(i) to any individual with a disability who is unable, as a result of a physical or mental impairment (including a vision impairment) and without the assistance of another individual (except an operator of a wheelchair lift or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities;

(ii) to any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device (and is able with such assistance) to board, ride, and disembark from any vehicle which is readily accessible to and usable by individuals with disabilities if the individual wants to travel on a route on the system during the hours of operation of the system at a time (or within a reasonable period of such time) when such a vehicle is not being used to provide public transportation on the route; and

(iii) to any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system; and

(B) to 1 other individual accompanying the individual with the disability.

For purposes of clauses (i) and (ii) of subparagraph (A), boarding or disembarking from a vehicle does not include travel to the boarding location or from the disembarking location.

(2) SERVICE AREA.—The regulations issued under this section shall require the provision of paratransit and special transportation services required under this section in the service area of each public entity which operates a fixed route system, other than any portion of the service area in which the public entity solely provides commuter bus service area in which the public entity solely provides commuter bus service or commuter rail service.

(3) SERVICE CRITERIA.—Subject to paragraphs (1) and (2), the regulations issued under this section shall establish minimum service criteria for determining the level of services to be required under this section.

(4) UNDUE FINANCIAL BURDEN LIMITATION.—The regulations issued under this section shall provide that, if the public entity is able to demonstrate to the satisfaction of the Secretary that the provision of paratransit and other special transportation services otherwise required under this section would impose an undue financial burden on the public entity, the public entity, notwithstanding any other provision of this section (other than paragraph (5)), shall only be required to provide such services to the extent that providing such services would not impose such a burden.

(5) ADDITIONAL SERVICES.—The regulations issued undere this section shall establish circumstances under which the Secretary may require a public entity to provide, notwithstanding paragraph (4), paratransit and other special transpor-

tation services under this section beyond the level of paratransit and other special transportation services which would otherwise be required under paragraph (4).

(6) PUBLIC PARTICIPATION.—The regulations issued under this section shall require that each public entity which operates a fixed route system hold a public hearing, provide an opportunity for public comment, and consult with individuals with disabilities in preparing its plan under paragraph (7).

(7) PLANS.—The regulations issued under this section shall require that each public entity which operates a fixed route system—

(A) within 18 months after the effective date of this subsection, submit to the Secretary and commence implementation of, a plan for providing paratransit and other special transportation services which meets the requirements of this section; and

(B) on an annual basis thereafter, submit to the Secretary, and commence implementation of, a plan for providing such services.

(8) PROVISION OF SERVICES BY OTHERS.—The regulations issued under this section shall—

(A) require that a public entity submitting a plan to the Secretary under this section identify in the plan any person or other public entity which is providing a paratransit or other special transportation service for individuals with disabilities in the service area to which the plan applies; and

(B) provide that the public entity does not have to provide under the plan such service for individuals with disabilities.

(9) OTHER PROVISIONS.—The regulations issued under this section shall include such other provisions and requirements as the Secretary determines are necessary to carry out the objectives of this section.

(d) REVIEW OF PLAN.—

(1) GENERAL RULE.—The Secretary shall review a plan submitted under this section for the purpose of determining whether or not such plan meets the requirements of this section, including the regulations issued under this section.

(2) DISAPPROVAL.—If the Secretary determines that a plan reviewed under this subsection fails to meet the requirements of this section, the Secretary shall disapprove the plan and notify the public entity which submitted the plan of such disapproval and the reasons therefore.

(3) MODIFICATION OF DISAPPROVED PLAN.—Not later than 90 days after the date of disapproval of a plan under this subsection, the public entity which submitted the plan shall modify the plan to meet the requirements of this section and shall submit to the Secretary and commence implementation of, such modified plan.

(e) DISCRIMINATION DEFINED.—As used in subsection (a), the term "discrimination" includes—

(1) failure of a public entity to which the regulations issued under this section apply to submit, or commence implementation of, a plan in accordance with subsections (c)(6) and (c)(7);

(2) a failure of such entity to submit, or commence implementation of, a modified plan in accordance with subsection (d)(3);

(3) submission to the Secretary of a modified plan under subsection (d)(3) which does not meet the requirements of this section; or

(4) a failure of such entity to provide paratransit or other special operation services in accordance with the plan or modified plan the public entity submitted to the Secretary under this section.

(f) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as preventing a public entity—

(1) from providing paratransit or other special transportation services at a level which is greater than the level of such services which are required by this section,

(2) from providing paratransit or other special transportation services in addition to those paratransit and special transportation services required by this section, or

(3) from providing such services to individuals in addition to those individuals to whom such services are required to be provided by this section.

SEC. 205. PUBLIC ENTITY OPERATING A DEMAND RESPONSIVE SYSTEM.

If a public entity operates a demand responsive system, it shall be considered discrimination, for purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such entity to purchase or lease a new vehicle for use on

such system, for which a solicitation is made after the 30th day following the effective date of this section, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service such system provides to individuals without disabilities.

SEC. 206. TEMPORARY RELIEF WHERE LIFTS ARE UNAVAILABLE.

(a) GRANTING.—With respect to the purchase of new buses, a public entity may apply for, and the Secretary may temporarily relieve such public entity from the obligation under section 203(a) or 205 to purchase new buses that are readily accessible to and usable by individuals with disabilities if such public entity demonstrates to the satisfaction of the Secretary—

(1) that the initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) the unavailability from any qualified manufacturer of hydraulic, electromechanical, or other lifts for such new buses;

(3) that the public entity seeking temporary relief has made good faith efforts to locate a qualified manufacturer to supply the lifts to the manufacturer of such buses in sufficient time to comply with such solicitation; and

(4) that any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

(b) DURATION AND NOTICE TO CONGRESS.—Any relief granted under subsection (a) shall be limited in duration by a specified date, and the appropriate committees of Congress shall be notified of any such relief granted.

(c) FRAUDULENT APPLICATION.—If, at any time, the Secretary as reasonable cause to believe that any relief granted under subsection (a) was faudulently applied for, the Secretary shall—

(1) cancel such relief if such relief is still in effect; and

(2) take such other action as the Secretary considers appropriate.

SEC. 207. NEW FACILITIES.

For purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a pbulic entity to construct a new facility to be used in the provision of public transportation services unless such facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

SEC. 208. ALTERATIONS OF EXISTING FACILITIES

(a) GENERAL RULE.—With respect to a facility or part thereof that is used in the provision of public transportation services and that is altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such entity to fail to make the alterations (or to ensure that the alterations are made) in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Where the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities if such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) SPECIAL RULE FOR STATIONS.—

(1) GENERAL RULE.—For purpsoes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to fail, in accordance with the provisions of this subsection, to make stations in intercity rail systems and key stations (as determined under criteria established by the Secretary by regulation) in rapid rail, commuter rail, and light rail systems readily accessible to and usable by individuals with disabilities, including idividuals who use wheelchairs.

(2) RAPID RAIL, COMMUTER RAIL, AND LIGHT RAIL KEY STATIONS.—

(A) ACCESSIBILITY.—Except as otherwise provided in this paragraph, all key statons (as determined under criteria established by the Secretary by

regulation) in rapid rail, commuter rail, and light rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 3-year period beginning on the effective date of this paragraph.

(B) EXTENSION FOR EXTRAORDINARILY EXPENSIVE STRUCTURAL CHANGES.—The Secretary may extend the 3-year period under subparagraph (A) up to a 30-year period for key stations in a rapid rail, commuter rail, or light rail system which stations need extraordinarily expensive structural changes to, or replacement of, existing facilities; except that by the last day of the 20th year following the date of the enactment of this Act at least ⅔ of such key stations must be readily accessible to and usable by individuals with disabilities.

(3) INTERCITY RAIL SYSTEMS.—All stations in intercity rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable, but in no event later than 20 years after the date of the enactment of this Act.

(4) PLANS AND MILESTONES.—The Secretary shall require the appropriate public entity to develop and submit to the Secretary a plan for compliance with this subsection—

(A) that reflects consultation with individuals with disabilities affected by such plan and the results of a public hearing and public comments on such plan, and

(B) that establishes milestones for achievement of the requirements of this subsection.

SEC. 209. PUBLIC TRANSPORTATION PROGRAMS AND ACTIVITIES IN EXISTING FACILITIES AND ONE CAR PER TRAIN RULE.

(a) PUBLIC TRANSPORTATION PROGRAMS AND ACTIVITIES IN EXISTING FACILITIES.—With respect to existing facilities used in the provision of public transportation services (other than facilities which have not been made readily accessible to and usable by individuals with disabilities in accordance with section 208(b)), it shall be considered discrimination, for purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public entity to fail to operate a public transportation program or activity conducted in such facilities so that, when viewed in the entirety, the program or activity is readily accessible to and usable by such individuals.

(b) ONE CAR PER TRAIN RULE.—

(1) GENERAL RULE.—Subject to paragraph (2), with respect to 2 or more vehicles operated as a train by intercity, light, rapid, and commuter rail systems, for purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to fail to have at least 1 vehicle per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 5-year period beginning on the effective date of this section.

(2) HISTORIC TRAINS.—In order to comply with paragraph (1) with respect to the remanufacture of a vehicle of historic character which is to be used on a segment of an intercity, light rapid, or commuter rail system which is included on the National Register of Historic Places, if making such vehicle readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity which operates such system only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of section 203(c)(1) and which do not significantly alter the historic character of such vehicle.

SEC. 210. REGULATIONS.

(a) ATTORNEY GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Attorney General shall issue regulations in an accessible format that implement this title (other than sections 201(1), 201(2), 201(4), 201(5), 203 through 209, and 213). Except for "program accessibility", "existing facilities", and "communications", such regulations shall be consistent with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). With respect to "program accessibility", "existing facilities", and "communications", such regulations shall be consistent with regulations and

analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under such section 504.

(b) SECRETARY.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall issue in an accessible format regulations to carry out sections 201(1), 201(2), 201(4), 201(5), 203, 205, 206, 207, 208, 209, and 213.

(2) STANDARDS.—The regulations issued under this section and section 204 shall include standards applicable to facilities and vehicles covered by such sections. The standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504 of this Act.

SEC. 211. ENFORCEMENT.

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be available with respect to any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of this title, including the regulations issued under this title.

SEC. 212. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as provided in subsection (b), this title shall become effective 18 months after the date of the enactment of this Act.

(b) EXCEPTION.—Sections 203, 204 (other than subsection (a)), 205, 206, 208(b), 209(b), 210, and 213 shall take effect on the date of the enactment of this Act.

SEC. 213. APPLICABILITY TO CERTAIN COMMUTER RAIL SYSTEMS.

(a) GENERAL RULE.—Subject to subsection (b), a public entity which operates a fixed route system providing commuter rail service does not have to purchase or lease readily accessible and usable commuter rail vehicles to meet the requirements of this title and does not have to remanufacture commuter rail vehicles to meet the requirements of this title—

(1) if such entity is meeting the requirement of this title relating to 1 car per train being accessible to individuals with disabilities;

(2) if such entity provides clear, concise, and adequate notice, in its stations, of which cars are so accessible and the location of such cars on its trains; and

(3) if, in any case in which additional services are offered in a nonaccessible car of a train, such entity makes reasonable provision to ensure that such services are available to individuals with disabilities in the accessible car or cars of such train.

(b) ADDITIONAL ACCESSIBLE CARS TO MEET DEMAND.—In order for a public entity to be exempt under subsection (a), in any case in which actual continuing demand for accessible service cannot be met by the public entity with 1 accessible car per train, the public entity must use such additional accessible cars per train as may be necessary to meet such demand.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

SEC. 301. DEFINITIONS.

As used in this title, the following definitions apply:

(1) COMMERCE.—The term "commerce" means travel, trade, traffic, commerce, transportation, or communications—

(A) among the several States;

(B) between any foreign country or any territory or possession and any State; or

(C) between points in the same State but through another State or foreign country.

(2) DEMAND RESPONSIVE SYSTEM.—The term "demand responsive system" means any system of providing transportation of individuals which is not a fixed routine system.

(3) FIXED ROUTE SYSTEM.—The term "fixed route system" means a system of providing transporation of individuals (other than by aircraft) on which a vehicle is operated along a prescribed route according to a fixed schedule.

(4) OVER-THE-ROAD BUS.—The term "over-the-road bus" means a bus characterized by an elevated passenger deck located over a baggage compartment.

(5) POTENTIAL PLACES OF EMPLOYMENT.—The term "potential places of employment" means facilities—

(A) that are intended for nonresidential use; and

(B) whose operations will affect commerce.

Such term does not include facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.).

(6) PRIVATE ENTITY.—The term "private entity" means any entity other than a department, agency, special purpose district, or other instrumentality of a Federal, State or local government.

(7) PUBLIC ACCOMMODATION.—The following privately operated entities are considered public accommodations for purposes of this title, if the operations of such entities affect commerce—

(A) an inn, hotel, motel, or similar places of lodging, except for an establishment located within a building that contains not more than 5 rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, staduim, or other place of exhibition or entertainment;

(D) an auditorium, convention center or lecture hall;

(E) a bakery, grocery store, clothing store, hardware store, shopping center or other similar retail sales establishment;

(F) a laundromat, dry-cleaners, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other similar service establishment;

(G) a terminal used for public transportation;

(H) a museum, library, gallery, and other similar place of public display or collection;

(I) a park or zoo;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school;

(K) a day care center, senior citizen center, homeless shelter, good bank, adoption program, or other similar social service center; and

(L) a gymnasium, health spa, bowling alley, golf course, or other similar place of exercise or recreation.

(8) PUBLIC TRANSPORTATION.—The term "public transportation" means transportation by bus or rail, or by other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(9) READILY ACHIEVABLE.—

(A) IN GENERAL.—The term "readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense.

(B) DETERMINATION.—In determining whether an action is readily achievable, factors to be considered include—

(i) the overall size of the covered entity with respect to a number of employees, number and type of facilities, and the size of budgets;

(ii) the type of operation of the coverd entity, including the composition and structure of the entity; and

(iii) the nature and cost of the action needed.

SEC. 302. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATION.

(A) GENERAL RULE.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, priviledges, advantages, and accommodations of any public accommodation.

(b) CONSTRUCTION.—

(1) GENERAL PROHIBITION.—

(A) ACTIVITIES.—

(i) DENIAL OF PARTICIPATION.—It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial or the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, priviledges, advantages, and accommodations of an entity.

(ii) PARTICIPATION IN UNEQUAL BENEFIT.—It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractural, contractural, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, priviledge, advantage, and accommodation that is not equal to that afforded to other individuals.

(iii) SEPARATE BENEFIT.—It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractural, licensing, or other arrangements with a good, service, facility privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, priviledge, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(B) INTEGRATED SETTINGS.—Goods, facilities, privileges, advantages accommodations, and services shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) OPPORTUNITY TO PARTICIPATE.—Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) ADMINISTRATIVE METHODS.—An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) ASSOCIATION.—It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, and accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(2) SPECIFIC PROHIBITIONS.—

(A) DISCRIMINATION.—As used in subsection (a), the term "discrimination" includes—

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, and accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally after the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individual because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in undue burden;

(iv) a failure to remove architectual barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles by the installation of a hydraulic or other lift), where such removal is readily achievable;

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure of make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable; and

(vi) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and

usable by individuals with disabilities, including individuals who use wheelchairs, and where the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities if such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General), except that this paragraph shall not be construed to require the installation of an elevator for facilities that are less than 3 stories or that have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the uses of such facilities.

(B) FIXED ROUTE SYSTEM.—

(i) ACCESSIBILITY.—It shall be considered discrimination for a private entity which operates a fixed route system and which is not subject to section 304 to purchase or lease a vehicle with a seating capacity in excess of 16 passengers (including the driver) for use on such system, for which a solicitation is made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(ii) EQUIVALENT SERVICE.—If a private entity which operates a fixed route system and which is not subject to section 304 purchases or leases a vehicle with a seating capacity of 16 passengers or less (including the driver) for use on such system after the effective date of this subparagraph that is not readily accessible to or usable by individuals with disabilities, it shall be considered discrimination for such entity to fail to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities.

(C).—DEMAND RESPONSIVE SYSTEM.—As used in subsection (a), the term "discrimination" includes—

(i) a failure of a private entity which operates a demand responsive system and which not subject to section 304 to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities; and

(ii) the purchase or lease by such entity for use on such system of a vehicle with a seating capacity in excess of 16 passengers (including the driver), for which solicitations are made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities (including individuals who use wheelchairs) unless such entity can demonstate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to individuals without disabilities.

(D) OVER-THE-ROAD BUSES.—

(i) LIMITATION ON APPLICABILITY.—Subparagraphs (B) and (C) do not apply to over-the-road buses.

(ii) ACCESSIBILITY REQUIREMENTS.—As used in subsection (a), the term "discrimination" includes (I) the purchase or lease of an over-the-road bus bus which does not comply with the regulations issued under section 306(a)(2) by a private entity which provides transportation of individuals and which is not primarily engaged in the business of transporting people, and (II) any other failure to such entity to comply with such regulations.

SEC. 303. NEW CONSTRUCTION IN PUBLIC ACCOMMODATIONS AND POTENTIAL PLACES OF EMPLOYMENT.

(a) APPLICATION OF TERM.—Except as provided in subsection (b), as applied to a—

(1) public accommodation; and
(2) potential place of employment;

the term "discrimination" as used in section 302(a) means a failure to design and construct facilities for first occupancy later than 30 months after the date of the enactment of this Act that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structually impracticable to meet the requirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this title.

(b) ELEVATOR.—Subsection (a) shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

SEC. 304. PROHIBITION OF DISCRIMINATION IN PUBLIC TRANSPORTATION SERVICES PROVIDED BY PRIVATE ENTITIES.

(a) GENERAL RULE.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce.

(b) CONSTRUCTION.—As used in subsection (a), the term "discrimnated against" includes—

(1) the imposition or application by a private entity that is primary engaged in the business of transporting people and whose operations affect commerce of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the public transportation services provided by such entity, unless such criteria can be shown to be necessary for the provision of such services;

(2) the failure of such entity to—

(A) make reasonable modifications consistent with those required under section 302(b)(2)(A)(ii);

(B) provide auxiliary aids and services consistent with the requirements of section (b)(2)(A)(iii); and

(C) remove barriers consistent with the requirements of section 302(b)(2)(A)(iv) and (v), and (vi);

(3) the purchase or lease by such entity of a new vehicle (other than an automobile, a van with a seating capacity of less than 8 passengers, including the driver, or an over-the-road bus) which is to be used to provide public transportation and for which a solicitation is made after the 30th day following the effective date of this section, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; except that the new vehicle need not be readily accessible to and usable by such individuals if the new vehicle is to be used solely in a demand responsive system and if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(4)(A) the purchase or lease by such entity of an over-the-road bus which does not comply with the regulations issued under section 306(a)(2); and

(B) any other failure of such entity to comply with such regulations; and

(5) the purchase or lease by such entity of a new van with a seating capacity of less than 8 passengers, including the driver, which is to be used to provide public transportation and for which a solicitation is made after the 30th day following the effective date of this section that is not readily accessible to or usable by individuals with disabilities, including individuals who use wheelchairs; except that the new van need not be readily accessible to and usable by such individuals if the entity can demonstrate that the system for which the van is being purchased or leased, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public.

SEC. 305. STUDY.

(a) PURPOSES.—The Office of Techology Assessment shall undertake a study to determine—

(1) the access needs of individuals with disabilities to over-the-road buses and over-the-road bus service; and

(2) the most cost effective methods for providing access to over-the-road buses and over-the-road bus service to individuals with disabilities, particularly individuals who use wheelchairs, through all forms of boarding options.

(b) CONTENTS.--The study shall include, at a minimum, an analysis of the following:

(1) The anticipated demand by individuals with disabilities for accessible over-the-road buses and over-the-road bus service.

(2) The degree to which such buses and service, include any service required under sections 304(b)(4) and 306(a)(2), are readily accessible to and usable by individuals with disabilities.

(3) The effectiveness of various methods of providing accessibility to such buses and services to individuals with disabilities.

(4) The cost of providing accessible over-the-road buses and bus service to individuals with disabilities, including consideration of recent technological and cost saving developments in equipment and devices.

(5) Possible design changes in over-the-road buses that could enhance accessibility, including the installation of accessible restrooms which do not result in a loss of seating capacity.

(6) The impact of accessibility requirements of the continuation of over-the-road bus service, with particular consideration of the impact of such requirements on such service to rural communities.

(c) ADVISORY COMMITTEE.—In conducting the study required by subsection (a), the Office of Technology Assessment shall establish an advisory committee, which shall consist of—

(1) members selected from among private operators and manufacturers of over-the-road buses;

(2) members selected from among individuals with disabilities, particularly individuals who use wheelchairs, who are potential riders of such buses; and

(3) members selected for their technical assistance equipment and devices.

The number of members selected under each of paragraphs (1) and (2) shall be equal, and the total number of members selected under paragraphs (1) and (2) shall exceed the number of members selected under paragraph (3).

(d) DEADLINE.—The study required by subsection (a), along with recommendations by the Office of Technology Assessment, including any policy options for legislative action, shall be submitted to the President and Congress within 36 months after the date of the enactment of this Act. If the President determines that compliance with the regulations issued pursuant to section 306(a)(2)(B) on or before the applicable deadlines specified in section 306(a)(2)(B) will result in a significant reduction in intercity over-the-road bus service, the President shall extend each such deadline by 1 year.

(e) REVIEW.—In developing the study required by subsection (a), the Office of Technology Assessment shall provide a preliminary draft of such study to the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792). The Board shall have an opportunity to comment on such draft study, and any such comments by the Board made in writing within 120 days after the Board's receipt of the draft study shall be incorporated as part of the final study required to be submitted under subsection (d).

SEC. 306. REGULATIONS.

(a) TRANSPORTATION PROVISIONS.—

(1) GENERAL RULE.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections 302(b)(2)(B) and (C) and 304 (other than subsection (b)(4)).

(2) SPECIAL RULES FOR PROVIDING ACCESS TO OVER-THE-ROAD BUSES.—

(A) INTERIM REQUIREMENTS—

(i) ISSUANCE.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections 304(b)(4) and 302(b)(2)(D)(ii) that require each private entity which uses an over-the-road bus to provide transportation of individuals to provide accessibility to such bus; except that such regulations shall not require any structural changes in over-the-road buses in order to provide access to individuals who use wheelchairs during the effective period fo such regulations and shall not require the purchase of boarding assistance devices to provide access to such individuals.

(ii) EFFECTIVE PERIOD.—The regulations issued pursuant to this subparagraph shall be effective until the effective date of the regulations issued under subparagraph (B).

(B) FINAL REQUIREMENT.—

(i) REVIEW OF STUDY AND INTERIM REQUIREMENTS.—The Secretary shall review the study submitted under section 305 and the regulations issued pursuant to subparagraph (A).

(ii) ISSUANCE.—Not later than 1 year after the date of this submission of the study under section 305, the Secretary shall issue in an accessible format new regulations to carry out sections 304(b)(4) and 302(b)(2)(D)(ii) that require, taking into account the purposes of the study under section 305 and any recommendations resulting from such study, each private entity which uses an over-the-road bus to provide transportation to individuals to provide accessibility to such bus to individuals with disabilities, including individuals who use wheelchairs.

(iii) EFFECTIVE PERIOD.—Subject to section 305(d), the regulations issued pursuant to this subparagraph shall take effect—

(I) with respect to small providers of transportation (as defined by the Secretary), 7 years after the date of the enactment of this Act; and

(II) with respect to other providers of transportation, 6 years after such date of enactment.

(C) LIMITATION ON REQUIRING INSTALLATION OF ACCESSIBLE RESTROOMS.—The regulations issued pursuant to this paragraph shall not require the installation of accessible restrooms in over-the-road buses if such installation would result in a loss of seating capacity.

(3) STANDARDS.—The regulations issued pursuant to this subsection shall include standards applicable to facilities and vehicles covered by sections 302(b)(2) and 304.

(b) OTHER PROVISIONS.—Not later than 1 year after the date of the enactment of this Act, the Attorney General shall issue regulations in an accessible format to carry out the provisions of this title not referred to in subsection (a) that include standards applicable to facilities and vehicles covered under section 302.

(c) CONSISTENCY WITH ATBCB GUIDELINES.—Standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504 of this Act.

SEC. 307 EXEMPTIONS FOR PRIVATE CLUBS AND RELIGIOUS ORGANIZATIONS.

The provisions of this title shall not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000-a(e)) or to religious organizations or entities controlled by religious organizations, including places of worship.

SEC. 308. ENFORCEMENT.

(a) GENERAL.—

(1) AVAILABILITY OF REMEDIES AND PROCEDURES.—The remedies and procedures set forth in section 204 of the Civil Rights Act of 1964 (42 U.S.C. sec. 2000a-3(a)) shall be available to any individual who is being or is about to be subjected to discrimination on the basis of disability in violation of this title.

(2) INJUNCTIVE RELIEF.—In the case of violations of section 302(b)(2)(A)(iv) and (vi) and section 303(a), injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this title.

(b) ENFORCEMENT BY THE ATTORNEY GENERAL.—

(1) DENIAL OF RIGHTS.—

(A) DUTY TO INVESTIGATE.—The Attorney General shall investigate alleged violations of this title, which shall include undertaking periodic reviews of compliance of covered entities under this title.

(B) POTENTIAL VIOLATION.—If the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title or that any person or group of persons has been denied any of the rights granted by such title, and such denial raises an issue of general

public importance, the Attorney General may commence a civil action in any appropriate United States direct court.

(2) AUTHORITY OF COURT.—In a civil action under paragraph (1), the court—

(A) may grant any equitable relief that such court considers to be appropriate, including granting temporary, preliminary, or permanent relief, providing an auxiliary aid or service, modification of policy or alternative method, or making facilities readily accessible to and usable by individuals with disabilities, to the extent required by this title;

(B) may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and

(C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount—

(i) not exceeding $50,000 for a first violation; and

(ii) not exceeding $100,000 for any subsequent violation.

(3) JUDICIAL CONSIDERATION.—In a civil action under paragraph (1), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this Act by the entity.

SEC. 309. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as provided in subsection (b), this title shall become effective 18 months after the date of the enactment of this Act.

(b) EXCEPTION.—Section 302(a) for purposes of sections 302(b)(2) (B) and (C) only, 304(a) for purposes of section 304(b)(3) only, sections 304(b)(3), 305, and 306 shall take effect on the date of the enactment of this Act.

TITLE IV—TELECOMMUNICATIONS RELAY SERVICES

SEC. 401. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

(a) TELECOMMUNICATIONS.—Title II of the Communications Act of 1934 (47 U.S.C 201 et seq.) is amended by adding at the end thereof the following new section.

"SEC. 225. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

"(a) DEFINITIONS.—As used in this section—

"(1) COMMON CARRIER OR CARRIER.—The term 'common carrier' or 'carrier' includes any common carrier engaged in interstate communication by wire or radio as defined in section 3(h), any common carrier engaged in intrastate communication by wire or radio, and any common carrier engaged in both interstate and intrastate communication, notwithstanding sections 2(b) and 221(b).

"(2) TDD.—The term 'TDD' means a Telecommunications Device for the Deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

"(3) TELECOMMUNICATIONS RELAY SERVICES.—The term 'telecommunications relay services' means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device

"(b) AVAILABILITY OF TELECOMMUNICATIONS RELAY SERVICES.—

"(1) IN GENERAL.—In order to carry out the purposes established under section 1, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

"(2) REMEDIES.—For purposes of this section, the same remedies, procedures, rights, and obligations under this Act that are applicable to common carriers engaged in interstate communication by wire or radio are also applicble to common carriers engaged in intrastate communication by wire or radio and common carriers engaged in both interstate and intrastate communication by wire of radio.

"(c) PROVISION OF SERVICE.—Each common carrier providing telephone voice transmission service shall provide telecommunications relay services individually, through designees, or in concert with other carriers not later than 3 years after the date of enactment of this section.

"(d) REGULATIONS.—

"(1) IN GENERAL.—The Commission shall, not later than 1 year after the date of enactment of this section, prescribe regulations to implement this section, including regulations that—

"(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

"(B) establish minimum standards that shall be met by common carriers in carrying out subsection (c);

"(C) require that telecommunications relay services operate every day for 24 hours per day;

"(D) require that users of telecommunications relay services pay rates no greater than the rate paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

"(E) prohibit relay operators from refusing calls or limiting the length of calls that use telecommunications relay services;

"(F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and

"(G) prohibit relay operators from intentionally altering a relayed conversation

"(2) TECHNOLOGY.—The Commission shall ensure that regulations prescribed to implement this section encourage the use of existing technology and do not discourage or impair the development of improved technology.

"(3) JURISDICTIONAL SEPARATION OF COSTS.—

"(A) IN GENERAL.—The Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

"(B) RECOVERING COSTS.—Such regulations shall generally provide that costs cause by interstate telecommunications relay services shall be recovered from the interstate jurisdiction and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction.

"(C) JOINT PROVISION OF SERVICES.—To the extent interstate and intrastate common carriers jointly provide telecommunications relay services, the procedures establish in section 410 shall be followed, as applicable.

"(4) FIXED MONTHLY CHARGE.—The Commission shall not permit carriers to impose a fixed monthly charge on residential customers to recover the cost of providing interstate telecommunication relay services.

"(5) UNDUE BURDEN.—If the Commission finds that full compliance with the requirements of this section would unduly burden one or more common carriers, the Commission may extend the date for full compliance by such carrier for a period not to exceed 1 additional year.

"(e) ENFORCEMENT.—

"(1) IN GENERAL —Subject to subsection (f) and (g), the Commission shall enforce this section.

"(2) COMPLAINT.—The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date such complaint is filed.

"(f) CERTIFICATION.—

"(1) STATE DOCUMENTATION.—Each State may submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services.

"(2) REQUIREMENTS FOR CERTIFICATION.—After review of such documentation, the Commission shall certify the State program if the Commission determines that the program makes available to hearing-impaired and speech-impaired individuals either directly, through designees, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such State in a manner that meets the requirements of regulations prescribed by the Commission under subsection (d).

"(3) METHOD OF FUNDING —Except as provided in subsection (d), the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunication relay services.

"(4) SUSPENSION OR REVOCATION OF CERTIFICATION.—The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted.

"(g) COMPLAINT.—

"(1) REFERRAL OF COMPLAINT.—If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) is in effect, the Commission shall refer such complaint to such State.

"(2) JURISDICTION OF COMMISSION.—After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if—

"(A) final action under such State program has not been taken on such complaint by such State—

"(i) within 180 days after the complaint is filed with such State; or

"(ii) within a shorter period as prescribed by the regulations of such State; or

"(B) the Commission determines that such State program is no longer qualified for certification under subsection (f)."

(b) CONFORMING AMENDMENTS.—The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended—

(1) in section 2(b) (47 U.S.C. 152(b)), by striking "section 223 or 224" and inserting "section 223, 224, and 225"; and

(2) in section 221(b) (47 U.S.C. 221(b)), striking "section 301" and inserting "sections 225 and 301"

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. CONSTRUCTION.

(a) REHABILITATION ACT OF 1973.—Nothing in this Act shall be construed to reduce the scope of coverage or apply a lesser standard than the coverage required or the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) OTHER LAWS.—Nothing in this Act shall be construed to invalidate or limit any other Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this Act.

(c) INSURANCE.—Titles I through IV of this Act shall not be construed to prohibit it or restrict—

(1) an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law;

(2) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(3) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide plan that is not subject to State laws that regulate insurance;

except that paragraphs (1), (2), and (3) are not used as a subterfuge to evade the purpose of title I and III.

SEC. 502. PROHIBITION AGAINST RETALIATION AND COERCION.

(a) RETALIATION.—No individual shall discriminate against any other individual because such other individual has opposed any act or practice made unlawful by this Act or because such other individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(b) INTERFERENCE, COERCION, OR INTIMIDATION.—It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this Act.

(c) REMEDIES AND PROCEDURES.—The remedies and procedures available under sections 107, 211, and 308 of this Act shall be available to aggrieved persons for violations of subsections (a) and (b)

SEC. 503. STATE IMMUNITY.

A State shall not be immune under the eleventh amendment to the Constitution or the United States from an action in Federal court for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

SEC. 504 REGULATIONS BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD.

(a) ISSUANCE OF GUIDELINES.—Not later than 6 months after the date of the enactment of this Act, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of titles II and III.

(b) CONTENTS OF GUIDELINES.—The guidelines issued under subsection (a) shall establish additional requirements, consistent with this Act, to ensure that buildings, facilities, and vehicles are accessible, in terms of architecture and design, transportation, and communications, to individuals with disabilities.

SEC. 505 ATTORNEY'S FEES.

In any action or administrative proceeding commenced pursuant to this Act, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonble attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

SEC. 506. TECHNICAL ASSISTANCE.

(a) PLAN FOR ASSISTANCE.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Attorney General, in consultation with the Chairman of the Equal Employment Opportunity Commission, the Secretary of Transportation, the National Council on Disability, the Chairperson of the Architectural and Transportation Barriers Compliance Board, and the Chairman of Federal Communications Commission, shall develop a plan to assist entities covered under this Act, along with other executive agencies and commissions, in understanding the responsibility of such entities, agencies, and commissions under this Act.

(2) PUBLICATION OF PLAN.—The Attorney General shall publish the plan referred to in paragraph (1) for public comment in accordance with the Administrative Procedure Act (5 U.S.C 551 et seq.).

(b) AGENCY AND PUBLIC ASSISTANCE.—The Attorney General is authorize to obtain the assistance of other Federal agencies in carrying out subsection (a), including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce

(c) IMPLEMENTATION —

(1) AUTHORITY TO CONTRACT —Each department or agency that has responsibility for implementing this Act may render technical assistance to idividuals and institutions that have rights or responsibilities under this Act.

(2) IMPLEMENTATION OF TITLES.—

(A) TITLE I.—The Equal Employment Opportunity Commission and the Attorney General shall implement the plan for assistance, as described in subsection (a), for title I

(B) TITLE II.—

(i) IN GENERAL —Except as provided for in clause (ii), the Attorney General shall implement such plan for assistance for title II.

(ii) EXCEPTION —The Secretary of Transportation shall implement such plan for assistance for sections 203 through 209.

(C) TITLE III.—The Attorney General, in coordination with the Secretary of Transportation and the Chairperson of the Architectural Transportation Barriers Compliance Board, shall implement such plan for assistance for title III

(D) TITLE IV —The Chairman of the Federal Communications Commission, in coordination with the Attorney General, shall implement such plan for assistance for title IV

(d) GRANTS AND CONTRACTS —

(1) IN GENERAL —Each department and agency having responsibility for implementing this Act may make grants or enter into contracts with individuals, profit institutions, and nonprofit institutions, including educational institutions

and groups or associations representing individuals who have rights or duties under this Act, to effectuate the purposes of this Act.

(2) DISSEMINATION OF INFORMATION.—Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by this Act and to provide information and technical assistance about techniques for effective compliance with this Act.

(e) FAILURE TO RECEIVE ASSISTANCE.—An employer, public accommodation, or other entity covered under this Act shall not be excused from meeting the requirements of the Act because of any failure to receive technical assistance under this section.

SEC. 507. FEDERAL WILDERNESS AREAS.

(a) STUDY.—The National Council on Disability shall conduct a study and report on the effect that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System as established under the Wilderness Act (16 U.S.C. 1131 et seq.)

(b) SUBMISSION OF REPORT.—Not later than 1 year after the date of the enactment of this Act, the National Council on Disability shall submit the report required under subsection (a) to Congress.

SEC. 508. TRANSVESTITTES.

For the purposes of this Act, the term "disabled" or "disability" does not apply to an individual solely because that individual is a transvestite.

SEC. 509. CONGRESSIONAL INCLUSION.

Notwithstanding any other provision of this act or of law, the provisions of this Act shall apply in their entirety to the Senate, the House of Representatives, and all the instrumentalities of the Congress, or either House thereof.

SEC. 510. ILLEGAL DRUG USE.

(a) GENERAL RULE.—For purposes of this Act, an individual with a "disability" does not include any individual who uses illegal drugs, but may include an individual who has successfully completed a supervised drug rehabilitation program, or has otherwise been rehabilitated successfully, and no longer uses illegal drugs.

(b) EXCEPTION.—However, for purposes of covered entities providing medical services, an individual who uses illegal drugs shall not be denied the benefits of such services on the basis of his or her use of illegal drugs, if he or she is otherwise entitled to such services.

SEC. 511 DEFINITIONS.

Under this Act the term "disability" does not include "homosexuality", "bisexuality", "transvestism", "pedophilia", "transsexualism", "exhibitionism", "voyeurism", "compulsive gambling", "kleptomania", or "pyromania", "gender indentify disorder", "current psychoactive substance use disorders", "current psychoactive substance-induced organic mental disorders", as defined by DSM-III-R which are not the result of medical treatment, or other sexual behavior disorders.

SEC. 512. AMENDMENTS TO THE REHABILITATION ACT.

(a) HANDICAPPED INDIVIDUAL.—Section 7(8) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)) is amended—

(1) in the first sentence of subparagraph (B) by striking "Subject to the second sentence of this subparagraph, the" and inserting "The";

(2) by striking the second sentence of subparagraph (B) and inserting the following:

"Notwithstanding any other provision of law, but subject to subparagraph (D) with respect to programs and activities providing education and the last sentence of this paragraph, the term 'individual with a handicap' does not include any individual who uses illegal drugs, except that an individual who is otherwise handicapped shall not be excluded from the protections of this Act if such individual also uses or is also addicted to drugs. For purposes of programs and activities providing medical services, and individual who currently uses illegal drugs shall not be denied the benefits of such programs or activities on the basis of his or her current use of illegal drugs if he or she is otherwise entitled to such services."; and

(3) by adding at the end the following new subparagraphs:

"(D) For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any handicapped student who currently uses drugs or alcohol to the same extent that such disciplinary action is taken against

nonhandicapped students. Furthermore, the due process procedures at 34 CFR 104.36 shall not apply to such disciplinary actions.

"(E) For purposes of section 503 and 504 of this Act as such sections relate to employment, the term "individual with handicaps' does not include any indivudal who is an alcoholic whose current use of alcohol prevents such individual for performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others."

(b) ILLEGAL DRUGS DEFINED.—Section 7 of such Act (29 U.S.C. 706) is further amended by adding at the end thereof the following new paragraph:

"(22) The term 'illegal drugs' means controlled substances, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), the possession or distribution of which is unlawful under such Act. The term "illegal drugs' does not mean the use of a controlled substances pursuant to a valid prescription or other uses authorized by the Controlled Substances Act or other provisions of Federal law."

SEC. 513. SEVERABILITY.

Should any provision in this Act be found to be unconstitutional by a court of law, such provision shall be served from the remainder of the Act, and such action shall not affect the enforceability of the remaining provisions of the Act.

INTRODUCTION

The Americans With Disabilities Act (ADA) will permit the United States to take a long-delayed but very necessary step to welcome individuals with disabilities fully into the mainstream of American society. The specific provisions of the bill which lie within the jurisdiction of the Committee on Public Works and Transportation are primarily within Titles II and III, dealing with publicly and privately provided transportation services.

With regard to pubilicly provided transportation services, the bill requires the purchase of new transit vehicles for use on fixed route systems which are readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs. The bill also requires the provision of paratransit services for those individuals whose disabilities preclude their use of the fixed route system.

Transit agencies across the United States have already made some progress in the provision of accessible transit services—35% of America's transit buses are currently accessible. As more and more transit authorities make the commitment to provide fully accessible bus service, the percentage of new bus purchases which are accessible has grown to more than 50% annually. By the mid-1990's many American cities will have completely accessible fixed route systems. Furthermore, many of the transit systems in America already provide some type of paratransit services to the disabled. So, the passage of the ADA will not break sharply with existing transit policy. It will simply extend past successes to even more cities, so that this country can continue to make progress in providing much needed transit services for individuals with disabilities.

With regard to privately provided transportation services, which do not receive the high levels of federal subsidies that publicly provided services do, the requirements of the bill vary according to the size and type of vehicle, as well as according to the type of system on which the vehicle operates.

Nonetheless, in all cases, the Americans with Disabilities Act provides strong guarantees that individuals with disabilities will be

treated with respect and dignity while using transporatation services. After all, the Americans With Disabilities Act is ultimately a civil rights bill. The history of the United States is rich with examples of diversity triumphing over discrimination, but not so rich that this country can ever afford to exclude, or segregate in any way, the significant number of its citizens who have disabilities.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS

Subsection (a) of this section provides that the Act may be cited as the "Americans with Disabilities Act of 1990"

SECTION 2. FINDINGS AND PURPOSES

This section describes the findings and purposes of the Act.

SECTION 3. DEFINITIONS

This section defines the terms "auxiliary aids and services", "disability", and "State" for purposes of the Act.

TITLE I—EMPLOYMENT

SECTION 101. DEFINITIONS

This section defines the terms "Commission", "covered entity", "employee", "employer", "Illegal drug", "person", "labor organization", "employment agency", "commerce", "industry affecting commerce", "qualified individual with a disability", "reasonable accommodation", and "undue hardship" for purposes of the Title.

SECTION 102. DISCRIMINATION

Subsection (a) of this section prohibits discrimination against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring or discharge of employees, employee compensation, advancement, job training, and other terms, conditions, and privileges of employment.

SECTION 103. DEFENSES

Subsection (a) of this section provides that a defense to a charge of discrimination under the Act may be that a denial of a job or benefit to a qualified individual with a disability was job-related, consistent with business necessity, and could not be avoided through reasonable accommodation.

SECTION 104. ILLEGAL DRUGS AND ALCOHOL

This section includes provisions regarding the use of alcohol or illegal drugs at the workplace, including provisions regarding tests to determine the use of illegal drugs.

SECTION 105. POSTING NOTICES

This section requires the posting of notices describing the provisions of the Act.

SECTION 106. REGULATIONS

This section requires the Equal Employment Opportunity Commission to issue regulations in an accessible format to carry out this Title not later than one year after the date of the enactment of the Act.

SECTION 107. ENFORCEMENT

This section provides that, with regard to employment, the remedies and procedures set forth in Title VII of the Civil Rights Act of 1964 shall be available to any individual who believes that he or she is being subjected to discrimination under the Act.

SECTION 108. EFFECTIVE DATE

This section provides that Title I become effective 24 months after the date of the enactment of the Act.

TITLE II—PUBLIC SERVICES

SECTION 201. DEFINITIONS

This section defines the terms "demand responsive system", "fixed route system", "operates", "public entity", "public school transportation", "public transportation", "qualified individual with a disability", and "Secretary" for purpose of the Title.

With regard to fixed route systems, the Committee defines these systems as those which operate along prescribed routes according to fixed schedules. The Committee intends that the "fixed schedule" component of this definition include those systems which operate vehicles at set times of day or at set intervals between vehicles. So long as the schedule is fixed, the system may operate at 5 minute intervals during periods of peak demand and 15 minute intervals during periods of weal demand and still be considered a fixed route system.

With regard to the operation of a system providing public transportation, if a public entity has entered into a contractual or other arrangement or relationship with a private entity to operate the system, or a portion of the system, the public entity must ensure that the same accessibility requirements are met by the private entity for service provided under a contractual, or other arrangement or relationship as would apply if the public entity were operating the system, or portion of the system, itself.

The Committee intends that the requirements of this legislation not be applied to "public school transportation" as defined in this Act, since such services are subject to the requirements of section 504 of the Rehabilitation Act of 1973, and it is not the intent of the Committee to require school systems receiving Federal financial assistance to meet any different requirements under this legislation than are currently required under seciton 504. Therefore, in promulgating regulations to implement this title, the Department of Transportation should recognize the special arrangements which are currently made with school districts in the provision of pupil transportation.

For example, although the definition speaks to transportation "to and from a public elementary or secondary school and school-

related activities," it is the Committee's intent to include in the scope of this exemption from the provisions of the Act, transportation of pre-Kindergarten children to Head Start or special education programs which receive Federal assistance. Similarly, it is the Committee's intent to include in this exemption transportation arrangements which permit pre-school children of school bus drivers to ride a school bus, or special arrangements allowing pre-school children of teenage mothers to be transported to day care facilities at a school or along the school bus route so that these mothers may continue to attend school.

SECTION 202. PROHIBITION AGAINST DISCRIMINATION

This section, subject to the provisions of the title, prohibits discrimination against a qualified individual with a disability with regard to the services, programs or activities of a public entity.

SECITON 203. PUBLIC ENTITIES OPERATING FIXED ROUTE SYSTEMS

Subsection (a) of this section provides that it shall be considered discrimination for purposes of this Act and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system to purchase or lease a new bus, a new rail vehicle, or any other vehicle to be used on a fixed route system unless the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Although individuals who use wheelchairs are specifically referenced, the concept of making a vehicle "readily accessible to and usable by individuals with disabilities" involves more than simply making it accessible to an individual using a wheelchair. For example, the regulations implementing this section may require vehicles to incorporate non-slip floors for individuals whose disabilities cause balance problems or specific visual information for the hearing-impaired.

This subsection applies to any solicitation for a vehicle made more than 30 days after the date of the enactment of the Act and applies to any public entity which operates a fixed route system regardless of the size of the community in which the system operates.

With regard to rail vehicles, the Committee intends that the use of "mini-high platforms" or portable wheelchair lifts meet the requirement that these vehicles are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, so long as a mini-high platform or a portable wheelchair lift is available when needed to board an individual with a disability.

Subsection (b) of this section states that it is discrimination for a public entity which operates a fixed route system to fail to make demonstrated good faith efforts to purchase or lease accessible used vehicles. For purposes of this subsection, remanufactured vehicles shall be treated as used vehicles beginning on the day after the last day of the period by which the usable life of the remanufactured vehicle was extended.

Subsection (c) of this section provides that it is discrimination for a public entity which operates a fixed route system, when remanufacturing a vehicle to extend its usable life by five years or more,

to fail to make that vehicle readily accessible to and usable by individuals with disabilities, to the maximum extent feasible. The word "remanufacture" means that the vehicle is stripped to its frame and rebuilt. Regarding the limitation of "to the maximum extent feasible", the Committee intends that remanufactured vehicles need only be modified to make them accessible to the extent that the modifications do not adversely affect the structural integrity of the vehicle in a significant way.

A partial exception to subsection (c) is provided for the remanufacturing of any vehicle operating on a segment of a system if that segment is included on the National Register of Historic Places. Vehicles used solely on such segments need only be made accessible to the extent that the modifications needed to provide accessibility to the vehicle do not significantly alter the historic character of such vehicles.

SECTION 204. PARATRANSIT AS A COMPLEMENT TO FIXED ROUTE SERVICE

This section states that it shall be considered discrimination for purposes of this Act and section 504 of the Rehablitation Act of 1973 for a public entity which operates a fixed route system, other than a system which provides solely commuter bus or commuter rail service, to fail to provide paratransit and other special transportation services to individuals with disabilities. The level of these services provided to individuals with disabilities must be comparable to the level of transit service provided to individuals without disabilities, except with regard to response time, in which case the level of service must only be comparable to the extent practicable. The paratransit service must be provided, beginning 18 months after the date of the enactment of the Act, in accordance with regulations issued by the Department of Transportation within one year after the date of the enactment of the Act.

Since the operations of fixed route and paratransit service differ so markedly, levels of service must only be comparable—not identical. With regard to response time, the Committee acknowledges that paratransit vehicle response time may not meet a standard of comparability with a fixed route system which operates vehicles at short headways. Instead, the legislation states that paratransit vehicle response time need only be "comparable to the extent practicable" to the response time of a vehicle provided on a fixed route system.

Subsection (c) of this section states that these regulations must require each public entity operating a fixed route system to provide paratransit service to any individual with a disability who is unable, as a result of a physical or mental impairment (including a vision impairment) and without the assistance of another individual (except an operator of a wheelchair lift or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities. The Committee intends "ride" to include both the physical ability to ride on the vehicle as well as the mental ability to understanding when to disembark from the vehicle.

The Committee specifically inserted the words "including a vision impairment" so that section 204 of the bill would unequivo-

cally cover individuals with vision impairments. Individuals with severe vision impairments traveling in unfamiliar surroundings or recently impaired individuals often need paratransit service since they cannot board, ride, or disembark from fixed route vehicles without assistance. The bill clearly extends paratransit eligibility to the vision impaired under these conditions, so long as the impairment is sufficiently severe to substantially limit one or more of their major life activities (a component of the definition of disability under this Act).

Similarly, the Committee included the phrase "mental impairment" to ensure that mentally retarded and mentally ill individuals are also entitled to paratransit service if their mental impairment substantially limits one or more of their major life activities and they are unable to board, ride or disembark from a fixed route vehicle.

A public entity operating a fixed route system must also provide paratransit service to any individual with a disability who would otherwise be able to utilize an accessible fixed route vehicle at a time, or within a reasonable period of such time, when the individual wishes to use such a vehicle and one is not available.

In general, the Committee does not intend that the concepts of boarding and disembarking include travel to or from a boarding or disembarking location. However, the Committee included a very narrow exception in recognition of specific impairment-related conditions which certain individuals with disabilities may have. Under the bill, paratransit services must be provided to any individual with a disability who has a specific impairment-related condition that prevents the individual from traveling to a boarding location or from a disembarking location on a fixed route system. A specific condition related to the impairment of the individual with a disability such as chronic fatigue, blindness, a lack of cognitive ability to remember and follow directions, or a special sensitivity to temperature must be present.

The Committee does not intend for the existence of architectural barriers to trigger eligibility for paratransit under this section if these barriers are not the responsibility of the fixed route operator to remove. In particular, no eligibility for paratransit exists due simply to a lack of curb cuts in the path of travel of an individual with a disability since, in the short term, such barriers can often be navigated around and, more importantly, pressure to eliminate these architectural barriers must be maintained on the state and local governmental entities responsible for eliminating them. In the same way, distance from a boarding or disembarking location alone does not trigger eligibility under this section. In both of these cases, a specific condition related to the impairment of the individual with a disability such as those cited previously must also be present to trigger paratransit eligibility.

The Committee is concerned that a broad interpretation of this exception will discourage the use of fixed route transit systems by individuals with disabilities. The transportation provisions of the legislation carefully balance the increased use of fixed route transit service by individuals with disabilities against expanded, costly paratransit service for those individuals who cannot use fixed route

systems. Both components must be implemented together to maintain this balance and to implement the bill cost-effectively.

The Committee is aware that special circumstances often eliminate or restrict the control that individuals with disabilities exercise over their lives. Therefore, the Committee encourages providers of special services to individuals with disabilities to locate these services near fixed route transit lines and to work with local fixed route operators to facilitate the use of their transit systems by individuals with disabilities.

Subsection (c) also specifies that paratransit service must be provided to one associate of each individual with a disability. The Committee anticipates occasions on which seats may be available on paratransit vehicles which could be used by additional associates—that is, in addition to the one associate accompanying the individual with a disability—wishing to accompany an individual with a disability. The Committee anticipates that these additional persons may be allowed to ride in the same paratransit vehicle as the individual with a disability and his or her associate, as long as the additional persons are going to the same destination, as the individual with a disability and do not use seats which would have otherwise been used by individuals with disabilities.

The Committee expects each fixed route operator to establish a local certification process to determine eligibility for paratransit service by individuals with disabilities in accordance with the provisions of this Act and the regulations issued pursuant to this section. As explicitly stated in subsection (f), a fixed route operator may regard the requirements of this section as a minimum level of paratransit service to be provided under the Act.

Section (c)(2) provides that paratransit service must be available throughout the public entity's service area, except for any area in which only commuter bus or commuter rail service is operated by the public entity. The Committee intends that any definitions of commuter bus and commuter rail service include widely accepted characteristics of commuter operations such as service almost exclusively in one direction during periods of peak demand, limited stops, use of multi-ride tickets or passes, and routes of extended length, usually from central business districts to outlying suburbs.

With regard to overlapping or contiguous service areas of fixed route systems operated by public entities, it is the Committee's expectation that, to the extent possible, the public entities providing paratransit services in these areas will coordinate the overall paratransit service provided. In fact, it is quite possible that a single public entity might provide better, coordinated paratransit service in the combined, overlapping or contiguous service areas of several fixed route operators (or better coordinate service among these operators) than if each of the operators provided a portion of the service itself.

Therefore, the regulations issued pursuant to this section should not prohibit one public entity, or a public entity in coordination with one or more fixed route operators, from providing or coordinating all of the paratransit service required under the Act in a region, or portion of a region, so long as the total level of service provided met or exceeded the combined level of service which would otherwise be required of all of the affected fixed route opera-

tors. The coordinating public entity would share joint responsibility with the fixed route operator(s) for providing the paratransit service required under the Act. This joint responsibility may include jointly fulfilling the requirements for public participation outlined in paragraph (6), so long as adequate opportunity for comment and consultation is provided to affected individuals with disabilities within a region, or portion of a region.

Subsection (c)(4) provides that if the paratransit requirements in this section would impose an undue financial burden on a public entity, the entity would not be required to provide service beyond this level of undue financial burden. The Committee intends that the determination of undue financial burden vary according to the financial constraints within which each public entity operates its fixed route system. A flexible numerical formula may be used to determine undue financial burden. Two examples of factors which may be considered when making this determination include the percentage increases in fares or reductions in levels of transit service which would be required to implement this section. Any determination of undue financial burden cannot have assumed the collection of additional revenues, such as those received through increases in local taxes or legislative appropriations, which would not have otherwise been made available to the fixed route operator.

Because a finding of undue financial burden on the part of a fixed route operator will restrict the level of paratransit service provided, the regulations issued pursuant to this section may include a requirement that each fixed route operator consider measures to improve the cost-effectiveness of the delivery of both fixed route and paratransit service provided by that operator before limiting paratransit service under the undue financial burden limitation.

Section (c)(5) specifies that the Secretary of Transportation may require a public entity to provide service beyond the undue financial burden limit. Among others, this provision addresses a potential situation in which a fixed route operator cannot provide even the most basic level of paratransit service without triggering the undue financial burden limitation. In that case, the Committee expects the regulations issued by the Secretary under this section to require a basic level of paratransit service to be provided by the fixed route operator.

Subsection (7) requires a public entity to submit, and begin implementation of, a paratransit service plan meeting the requirements of the regualtions issued pursuant to this section within 18 months after the date of the enactment of this Act. Thereafter, the plan must be revised annually.

Subsection (8) states that a public entity is not required to provide paratransit service provided by another public entity or person in a given service area. A public entity may identify in its paratransit seervice plan other entities or persons which are providing a sufficient level of paratransit service so that the public entity can state that, because of the existence of that service, it has met its obligation to provide paratransit service under the Act. However, the public entity must ensure that the paratransit service is actually being provided throughout the year.

The Committee intends that the DOT regulations issued under this section include provisions requiring adjustments in paratransit service in response to a significant occurrence in an operator's service area, such as the withdrawal from the marketplace of a private paratransit provider.

A public entity does not have to monitor private organizations that may be providing paratransit service in its service area which have not been identified in its paratransit plan. Instead, since the public entity is ultimately responsible for the provision of the paratransit service required of it under the Act, the public entity must only monitor and ensure adequate service from those entities or persons which it has identified in its paratransit plan as surrogates to meet its responsibilities under the Act.

A public entity violates the paratransit requirements of this section if it fails to submit and begin implementation of a paratransit plan or modified plan, if required; or if a modified plan fails to meet the requirements of the bill; or if the paratransit service included in the plan is not provided in accordance with the plan.

The Secretary must disapprove a paratransit plan if it does not meet the requirements of this section. If a plan is disapproved, the public entity must submit a modified plan within 90 days of the disapproval.

SECTION 205. PUBLIC ENTITIES OPERATING DEMAND RESPONSIVE SYSTEMS

This section provides that it is discrimination for purposes of this Act and Section 504 of the Rehabilitation Act of 1973 for a public entity operating a demand responsive system to fail to purchase or lease a new vehicle for use on such system that is readily accessible to and usable by individuals with disabilities, unless the entity can demonstrate that its system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to members of the general public without disabilities.

The standard of a system viewed in its entirety providing an equivalent level of service is met when an operator has, or has access to, a vehicle (including a vehicle operated in conjunction with a portable boarding assistance device) which is readily accessible to and usable by individuals with disabilities to meet the needs of such individuals on an "on-call" basis. Essentially, when all aspects of the system are analyzed, an individual with a disability must have an equivalent opportunity to use the system.

SECTION 206. TEMPORARY RELIEF WHERE LIFTS ARE UNAVAILABLE

This section provides for a temporary exemption from accessible bus requirements under sections 203(a) or 205 if wheelchair lifts are not available from a qualified manufacturer, a public entity has made good faith efforts to locate such a manufacturer, and any delay in purchasing new buses would significantly impair transportation services in the community served by the public entity.

The Committee understands that certain fixed route operators may be restricted from using accessible, 102" wide commuter buses for various reasons. One alternative vehicle which would meet the requirements of the Act is the 96" commuter bus, which some man-

ufacturers are apparently unwilling to fully warranty due to the structural modifications necessary to accommodate a wheelchair lift. Another alternative is the 96" suburban bus, which does not have the structural difficulties in accommodating a lift that a commuter bus does. A fixed route operator would not qualify for a waiver under this section from wheelchair lift purchase requirements for a 96" commuter bus since an acceptable alternative—the 96" wide, lift-equipped suburban bus—exists. However, the Committee certainly encourages fixed route operators, commuter bus manufacturers, and the Secretary of Transportation to work towards the development of a fully warranted, accessible, 96" wide commuter bus, especially in light of recent improvements in lift technology.

SECTION 207. NEW FACILITIES

This section provides that it is discrimination for purposes of this title and section 504 of the Rehabilitation Act of 1973 for a public entity to fail to construct a new facility which will be used in the provision of public transportation services which is readily accessible to and usable by individuals with disabilities.

SECTION 208. ALTERATIONS OF EXISTING FACILITIES

This section provides that if an alteration to a facility used in the provision of public transportation services affects or could affect the usability of the facility, the altered portion must be readily accessible to and usable by individuals with disabilities, to the maximum extent feasible.

If the alteration affects the usability of or access to an area containing a primary function, then the path of travel to the altered area, and the restrooms, telephones and drinking fountains serving the altered area would also have to be made accessible, to the maximum extent feasible, although these alterations are required only if they are not disproportionate in cost and scope to the overall alterations.

Section 208(b) provides that key stations in rapid, commuter, and light rail systems must be made readily accessible to and usable by individuals with disabilities as soon as practicable, but in no event later than three years after the date of the enactment of the Act. This period may be extended by the Secretary up to a 30-year period for extraordinarily expensive structural changes to, or replacement of, existing facilities, provided that two-thirds of these stations requiring extraordinarily expensive structural changes have been made accessible by the end of 20 years from the date of the enactment of this Act. The Committee intends that the stations completed during this initial 20-year period be widely located throughout the service area of the fixed route operator.

The Committee intends that the criteria established by the Secretary for determining key stations include characteristics such as high ridership, transfer points (including "feeder" points of transfer from other fixed route systems), and high ridership, end-of-the-line stations. When high ridership is the sole factor in determining a key station, consideration should be given to the proximity of that station to other key stations. Each of several closely grouped,

high volume stations need not be designated a key station solely due to a high volume of ridership.

The Committee finds special merit in local settlement agreements (such as those negotiated in New York and Philadelphia) regarding the identification of key stations, when they have been negotiated in good faith by public entities and representatives of the disability community. The Committee expects the criteria established by the Secretary to find that these local agreements fully meet the requirements of this subsection.

SECTION 209. PUBLIC TRANSPORTATION PROGRAMS AND ACTIVITIES IN EXISTING FACILITIES AND ONE CAR PER TRAIN RULE

Subsection (a) of this section requires public transportation programs and activities to be accessible, when viewed in their entirety, other than those conducted in key stations which have not yet been made accessible in accordance with section 208(b).

Section 209(b) requires that at least one car per train on intercity, light, rapid, and commuter rail trains of at least two vehicles in length be accessible to individuals with disabilities within five years of the date of the enactment of the Act. The Committee specifically exempted one-car trains, such as streetcars, from the requirements of this subsection.

SECTION 210. REGULATIONS

This section requires the Attorney General and the Secretary of Transportation to issue regulations in an accessible format implementing the legislation within one year of the date of the enactment of the Act. The regulations issued under this section and section 204 by the Secretary must include standards applicable to facilities and vehicles which are consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504 of the Act.

With regard to developing standards for wheelchair lifts, wheelchair restraint devices, and other devices necessary to facilitate the use of transit vehicles and facilities by individuals with disabilities, the Committee directs the Secretary to consult with, at a minimum, representatives from the disability community, transit operators, vehicle manufacturers, and wheelchair manufacturers.

The regulations issued pursuant to this section must include a requirement that wheelchair lifts and other boarding assistance devices be maintained in working order and that, when operational and when needed, they be deployed at the request of an individual with a disability.

SECTION 211. ENFORCEMENT

This section provides that the remedies, procedures and rights set forth in Section 505 of the Rehabilitation Act of 1973 shall be available with respect to any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of this title, including the regulations issued under this title.

SECTION 212. EFFECTIVE DATE

This section provides that the paratransit requirement for operators of fixed route systems take effect 18 months after the date of the enactment of the Act. In general, accessible vehicle purchase requirements take effect 30 days after the date of enactment.

SECTION 213. COMMUTER RAIL SYSTEMS

Subsection (a) of this section provides a partial exemption to the accessible commuter rail vehicle purchase and remanufacturing requirements under section 203 as long as (1) the one car per train requirement under section 209 is met, (2) clear, concise, and adequate notice is provided identifying accessible vehicles and their location on a train, and (3) reasonable provision is made to ensure that additional services provided on nonaccessible vehicles are provided to individuals with disabilities traveling on accessible vehicles.

Section 213(b) requires that additional accessible vehicles must be provided if one accessible car per train is insufficient to meet actual continuing demand for accessible service.

In interpreting "continuing demand", the Committee intends that the demand be regular and consistent. If a given train's accessible car is filled daily to capacity and on any given day or days of the week an additional person in a wheelchair regularly waits for a ride and is not accommodated, that train does not meet continuing demand. A given train need not operate over capacity seven days a week to trigger the additional vehicle provisions, so long as the demand is regular or predictable. For instance, a person may have a part-time job and only ride a train three days a week. A student may ride to attend classes twice a week. A person may travel to the hospital once a week. In all cases, if the demand is continuing yet a train's accessible vehicle is sometimes filled to capacity, an additional accessible vehicle must be provided.

Regarding one-time special events which cause a sharp increase in wheelchair ridership, the Committee recognizes that all wheelchair users attending such events may not be successfully accommodated. However, if special events which occur on a regular, scheduled basis, such as sporting events or concerts, are found to attract increased ridership by individuals with disabilities, increased accessible capacity must be provided. In both cases (determining continuous demand and special events demand), the determination of whether such demand exists and what steps consistent with this subsection must be taken to meet the demand shall be made by the fixed route operator in close and good faith consultation with the disability community in the market area served by the operator. The operator must consult with individuals with disabilities, the majority of which must be individuals with disabilities who use wheelchairs. This consultation, in addition to conductors' reports on the adequacy of accessible capacity, will provide a means for the disability community to alert the operator to new, continuing demand for accessible service.

When it is determined that continuing demand cannot be met by one accessible car per train, section 213 states that the public entity must use such additional accessible cars per train as may be

necessary to meet such demand. It is the Committee's intent that the rail operator do so promptly. Usually providing an additional car is a matter of operational adjustments—such as rail yard changes—to place an additional accessible car on a given train. These operational changes can and should be made promptly after a finding of unmet continucing demand is made.

Nothing in Section 213(b) is intended to preclude an operator from meeting continuing demand for accessible service by first taking reasonable steps to increase the number of wheelchair locations available in accessible cars before adding additional cars. The maximum number of wheelchair locations per car would be decided in conjunction with the advisory committee.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

SECTION 301. DEFINITIONS

Section 301 defines the terms "commerce," "demand responsive system," "fixed route system," "over-the-road bus," "potential places of employment," "private entity," "public accommodation," "public transportation," and "readily achievable" for purposes of the title.

Consistent with the exemption established in Title II for "public school transportation," the Committee does not intend for the provisions of this title to apply to the transportation of school children to and from a private elementary or secondary school and school-related activities, provided that the school is a recipient of Federal assistance, subject to the provisions of section 504 of the Rehabilitation Act of 1973, and is providing bus service to children with disabilities equivalent to that provided to children without disabilities.

The term "over-the-road bus" is defined as a bus characterized by an elevated passenger deck located over a baggage compartment. The term includes most of the buses typically used in intercity, charter, or tour service.

The term "public transportation" is defined as transportation by bus or rail, or by any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

The Committee excluded transportation by aircraft because of the existence of the Air Carrier Access Act of 1986 (P.L. 99-435). However, the term public transportation does include shuttle service operations operated by commercial airlines. Title III does not apply to volunteer-driven commuter ridership arrangements.

Section 301(7) of the legislation sets forth the definition of the term "public accommodation" and lists examples of entities to be included under this definition. The list includes restaurants, hotels, movie theaters, stadiums, grocery stores, professional offices, terminals used for public transportation, museums, zoos, homeless shelters and recreational facilities. An example of an entity excluded from this list, and therefore not considered a public accommodation, would be a construction job site—which is often in a constant state of transition—such as one used in the construction of a new public transportation facility. Religious institutions or entities con-

trolled by religious institutions are also not covered by the legislation.

SECTION 302. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATIONS

Section 302(a) specifies the genreal rule that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation.

Section 302(b)(1) states that it is discriminatory to subject an individual or class or individuals, directly or indirectly, on the basis of disability, to any of the following:

denying the opportunity to participate in, or benefit from, goods, services, facilities, privileges, advantages, and accommodations;

affording an opportunity that is not equal to that afforded others;

providng an opportunity that is different or separate, unless such action is necessary to provide the individuals with an opportunity that is as effective as that provided to others; however, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

Section 302(b)(2)(A) is a non-inclusive list of examples of what constitutes "discrimination." These include: imposition or application of eligibility criteria that screen out individuals with disabilities; failure to make reasonable modifications in policies, practices and procedures, failure to take such steps as may be necessary to ensure that no individual with a disability is excluded or treated differently because of the absense of auxiliary aids and services unless it would fundamentally alter the nature of the activity or would result in an undue burden; failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehcles by the installation of a hydraulic or other lift), where such removal is readily achievable; where an entity can demonstrate that the removal of a barrier is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, and accommodations available through alternative methods if such methods are readily achieveable. With respect to a facility that is altered in a manner that affects the usability of the facility, the failure to make the alterations is a manner so that, to the maximum extent feasible, the altered portion is readily accessible to and usable by individuals with disabilities. With regard to an alteration that affects the usability of an area containing a primary function, the path of travel to the altered area, and bathrooms, telephones, and drinking fountains serving the remodeled area must also be made readily accessible to and usable by individuals with disabilities, to the extent that these alterations are not disproportionate in cost and scope to the overall alterations.

Section 302(b)(2) also includes specified provisions relating to prigate entities not primarily engaged in the business of transporting people which operate transportation systems. Operations covered by the requirements include, but are not limited to: hotel and motel airport shuttle services, customer and employee shuttle but services operate by private companies and shopping centers, and shuttle operations of recreational facilities such as stadium, zoos, amusement parks and ski resorts.

Provisions in section 302(b)(2) do not apply to private entities primarily engaged in the business of transporting people—which are covered in section 304—or to over-the-road bus operations.

Section 302(b)(2)(B)(i) applies to private entities operating fixed route systems using vehicles with a seating capacity in excess of 16 passengers (including the driver). These entities must purchase or lease new vehicles for use on such systems which are readily accessible to and usable by individals with disabilities whenever a solicitation is made for such vehicles 30 days after the date of the enactment of the Act.

Section 302(b)(2)(B)(ii) applies to fixed route systems using vehicles with a seating capacity of 16 passengers or less (including the driver). If a private entity purchases or leases a new vehicle which is not accessible for use on such system, the entity must operate the system so that, when viewed in its entirety, the system ensures a level of service to individuals with disabilities equivalent to the level of service provided to individuals without disabilities. The standard of a system viewed in its entirety providing an equivalent level of service is met when an operator has, or has access to, a vehicle (including a vehicle operated in conjunction with a portable boarding assistance device) which is readily accessile to and usable by individuals with disabilities to meet the needs of such individuals on an "on-call" basis. Essentially, when all aspects of the system are analyzed, an individual with a disability must have an equivalent opportunity to use the system.

For example, if a hotel near an airport provides fixed route shuttle service to the airport, the hotel need not purchase new vehicles with a seating capacity of 16 or less that are accessible so long as it makes alternative equivalent arrangements for transporting people with disabilities who cannot board the inaccessible vehicles. In addition to the hotel owning an accessible vehicles itself, the hotel may make arrangement with another hotel that has an accessible vehicles that can be made available to provide equivalent shuttle service or may use a portable boarding assistance device in concert with an otherwise inaccessible vehicle to meet the requirement of this cause of the legislation.

Section 302(b)(2)(C) specifies requirements for private entities which operate demand responsive systems. Section 302(b)(2)(C)(i) applies to operators of demand responsible systems which use vehicles with a seating capacity of 16 passengers or less (including the driver). These systems must operate, so that, when viewed in their entirety, the system ensures a level of service to individuals with disabilities equivalent to the level of service provided to individuals without disabilities.

Section 302(b)(2)(C)(ii) provides that vehicles seating more than 16 passengers must be accessible if a solicitation is made more than 30

days after the date of the enactment of the Act, unless the operator's system, when viewed in its entirety, provides an equivalent level of service to individuals with or without, disabilities.

Section 302(b)(2)(D)(i) specifies that the requirements in subparagraphs (B) and (C) relating to private entities not primarily engaged in the business of transporting people do not apply to over-the-road buses. Over-the-road buses must meet the vehicle and system requirements specified in sections 304 and 306 regardless of whether the private entity operating them is primarily, or not primarily, in the business of transporting people.

Section 302(b)(2)(D)(ii) states that over-the road buses used to provide transportation of individuals by a private entity not primarily engaged in the business of transporting people must comply with the regulations issued under section 306(a)(2).

SECTION 303. NEW CONSTRUCTION IN PUBLIC ACCOMMODATIONS AND POTENTIAL PLACES OF EMPLOYMENT

Section 303 specifies that discrimination includes a failure to design and construct facilities for first occupancy later than 30 months after the date of the enactment of the Act readily accessible to and usable by individuals with disabilities except where an entity can demonstrate that it is structurally impracticable to do so.

SECTION 304. PROHIBITION OF DISCRIMINATION IN PUBLIC TRANSPORTATION SERVICES PROVIDED BY PRIVATE ENTITIES

Section 304(a) states the general rule that prohibits discrimination on the basis of disability in the full and equal enjoyment of transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce.

Section 304(b)(1) specifies that the term "discriminated against" includes the imposition or application of eligibility criteria that screen out or tend to screen out persons with disabilities from fully enjoying public transportation services, unless such criteria can be shown to be necessary for the provision of such services.

304(b)(2) lists further examples of discrimination, including: a failure such entity to make reasonable modifications consistent with those required under section 302(b)(2)(A)(ii); a failure to provide auxiliary aids and services consistent with the requirements of section 302(b)(2)(A)(iii); and a failure to remove barriers consistent with the requirements of section 302(b)(2)(A)(iv), (v), and (vi).

The examples of discrimination contained in section 304(b) are intended to address situations that are not covered in the specific vehicle and system requirements for private entities primarily engaged in the business of transporting people included in sections 304(b)(3), 304(b)(4), 304(b)(5) and 306. The general rule contained in paragraph (a) and the examples of discrimination contained in paragraph (b) are not intended to override the specific requirements contained in the sections referenced in the previous sentence. For example, an individual with a disability could not make a successful claim under section 304(a) that he or she had been discriminated against in the full and equal enjoyment of public trans-

portation services on the grounds that an over-the-road bus was not wheechair lift-equipped, if a lift was not required under 304(b)(4) or 306(a)(2).

Section 304(b)(3) requires private entities primarily engaged in the business of transporting people to purchase new vehicles (other than automobiles, vans with seating capacities of less than 8 passengers, including the driver, or over-the-road buses) that are to be used on a fixed route system which are readily accessible to and usable by individuals with disabilities when solicitations are made 30 days after the date of the enactment of the Act. If such vehicles are to be used solely on a demand responsive system, they need not be accessible if an entity can demonstrate that its system, when viewed in its entirety, provides an equivalent level of service to individuals with disabilities as that provided to the general public.

Section 304(b)(4) requires over-the-road buses to comply with the regulations issued under section 306(a)(2) and makes it discrimination to purchase or lease an over-the-road bus which does not meet those requirements Two sets of regulations will be issued by the Department of Transportation under section 306(a)(2) which include vehicle-specific requirements for over-the-road buses The content of these regulations is discussed in detail under section 306 of this report.

Section 304(b)(5) requires a van with a seating capacity of less than 8 passengers, including the driver, to be purchased or leased by a private entity so that it is readily accessible to an usable by an individual with a disability, unless the entity can demonstrate that the system for which the van is being purchased or leased, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to the level of service provided to the general public. Under this subsection, minivans are treated the same whether they are operated in a fixed route system or a demand responsive system. Owning, or having access to, an accessible minivan or a portable boarding assistance device which can be used in concert with an otherwise inaccessible minivan that will meet the needs of disabled passengers on an on-call basis is required under this subsection.

Regardless of vehicle requirements, anyone in the business of providing taxi service shall not discriminate on the basis of disability in the delivery of that service. For example, it would be discrimination under the Act to refuse to pick up a person on the basis of that person's disability. A taxicab driver could not refuse to pick up someone in a wheelchair because he or she believes that the person could not get out of their chair or because he or she does not want to lift the wheelchair into the trunk or back seat of the taxi.

SECTION 305. STUDY

Section 305(a) directs the Office of Technology Assessment (OTA) to conduct a study to determine (1) the access needs of individuals with disabilities to over-the-road buses and to over-the-road bus service; and (2) the most-cost effective methods for providing access to over-the-road buses and over-the-road bus service to individuals with disabilities through all forms of boarding options.

During its hearings on the legislation, the Committee heard conflicting testimony on the cost and reliability of wheelchair lifts or other boarding assistance devices with regard to their use on over-the-road buses. Therefore, before mandating these or any other boarding options in this Act, a thorough study of the access needs of individuals with disabilities to these buses and the cost-effectiveness of different methods of providing such access is required by the Act.

Section 305(b) specifies which issues must be analyzed by the study, but is not intended to be all-inclusive. The analysis required by the legislation includes a review of accessibility issues relating to vehicle-specific aspects of over-the-road buses, as well as to system-wide aspects of over-the-road bus service. Both aspects of over-the-road bus accessibility are included so that neither is favored over the other in the organization of the study.

The contents of the study must include, at a minimum, an analysis of the following:

(1) The anticipated demand by individuals with disabilities for accessible over-the-road buses and over-the-road bus service;

(2) The degree to which such buses and service, including any service required under sections 304(b)(4) and 306(a)(2), are readily accessible to and usable by individuals with disabilities;

(3) The effectiveness of various methods of providing accessibility to such buses and service to individuals with disabilities. All types of methods (including the use of boarding chairs, ramps, wheelchair lifts, and other boarding assistance devices) which may, or may not, involve the physical lifting of a boarding assistance device should be analyzed in terms of their effectiveness.

(4) The cost of providing accessible over-the-road buses and bus service to individuals and disabilities, including consideration of recent technological and cost saving developments in equipment and devices. All types of methods should be analyzed in terms of their cost.

(5) Possible design changes in over-the-road buses that could enhance accessibility, including the installation of accessible restrooms which do not result in a loss of seating capacity. The study should analyze the potential for changes in bus design to better accommodate accessibility equipment. The study should also analyze whether an accessible restroom could be added to an over-the-road bus without resulting in a loss of seating capacity. "Seating capacity" means a reduction in the number of seats on a bus in which passengers can ride comfortably. For example, if a seat were reduced in size in order to accommodate an accessible restroom, the seat would have to be capable of carrying a passenger as comfortably as an existing full seat in order to avoid a finding of a loss in seating capacity.

(6) The impact of accessibility requirements on the continuation of over-the-road bus service, with particular consideration of the impact of such requirements on service to rural communities. This provision recognizes that the intercity bus industry serves approximately 9500 communities that are not served by any other form of intercity public transportation. For the reason, the study must look at the impact various

methods of providing accessibility will have on the industry's ability to continue service (particularly to rural communities) given its economic history, passenger demographics, pressure from competitors, and future economic projections.

Section 305(c) requires the OTA to establish an advisory committee for the purposes of conducting the study and specifies the committee's membership, in terms of number and representation. There are to be equal numbers of members from among (1) private operators and manufacturers of over-the-road buses and (2) individuals with disabilities who are potential riders of such buses. A third group of members are to be selected for their technical expertise on issues included in the study, including manufacturers of boarding assistance equipment and devices. The total number of members from groups (1) and (2) must exceed the number of members from the third group.

Section 305(d) requires the study and OTA's recommendations, including any policy options for legislative action, to be submitted to the President and Congress within 36 months after the date of the enactment of the act. The President must extend each of the deadlines for compliance with the regulations in section 306(a)(2)(B) for one year if the President determines that such compliance will result in a significant reduction in intercity over-the-road bus service.

Section 305(e) requires OTA to provide a preliminary draft of the study to the Architectural and Transportation Barriers Compliance Board (ATBCB), to give the Board an opportunity to comment on the draft study, and to incorporate written comments from the Board received by the OTA within 120 days of the Board's receipt of the draft study as part of the final study.

SECTION 306. REGULATIONS

Section 306(a)(1) requires the Secretary of Transportation to issue regulations in an accessible format to carry out sections 302(b)(2)(B) and (C) and 304 (other than subsection (b)(4)). These regulations will apply to all providers of transportation under title III of the Act and will include all requirements for the provision of such transportation except for the vehicle-specific requirements for over-the-road buses included in section 304(b)(4).

With regard to over-the-road buses, the legislation gives the Secretary rulemaking authority under section 306(a)(1) to implement section 304 only to the extent that any regulations issued under pararagaph (1) are not inconsistent with the vehicle-specific requirements for over-the-road buses contained in section 306(a)(2). An example of a general, rather than a vehicle-specific, requirement permitted under section 306(a)(1) which could be applied to over-the-road bus transportation would be a requirement that an indivual with a disability be allowed to board an over-the-road bus in spite of the fact that the bus was not readily accessible to and usable by an individual with a disability.

Section 306(a)(2) requires the Secretary of Transportation to issue regulations for providing access to over-the-road buses in two separate rulemakings.

Section 306(a)(2)(A) specifies the interim requirements for over-the-road buses, to be issued not later than one year after the date of the enactment of the Act to carry out sections 304(b)(4) and 302(b)(2)(D)(ii). Such regulations will require each private entity which uses an over-the-road bus to provide accessibility to such bus; except that such regulations shall not require any structural changes in over-the-road buses in order to provide access for individuals who use wheelchairs during the effective period of such regulations and shall not require the purchase of boarding assistance devices to provide access to such individuals. These interim requirements will be effective until the effective date of the final regulations issued under 306(a)(2)(B).

While these interim requirements are in effect, it will not be considered discrimination for a private entity to purchase or lease an over-the-road bus which is not wheelchair lift-equipped or to which a boarding chair and/or ramp is not provided to board such bus. However, nothing in the legislation prevents an operator from using lifts, boarding chairs, ramps or other boarding assistance devices during the interim period. The regulations in effect during this period may require additions to an over-the-road bus to aid accessibility which do not require structural changes or boarding assistance devices, such as the installation of non-skid strips on stairs. The failure to equip buses with these types of aids, if required by regulations, would subject an operator to a claim of discrimination under section 304(b)(4).

Section 306(a)(2)(B) requires the Secretary of Transportation to review the OTA study and issue final regulations not later than one year after the submission of the study to the Secretary. The regulations shall require, taking into account the purposes of the study under section 305 and any recommendations resulting from such study, each private entity which uses an over-the-road bus to provide transportation to individuals to provide accessibility to such bus to individuals with disabilities. These regulations will be effective 7 years after date of enactment for small providers, as defined by the Secretary, and 6 years after date of enactment for other providers.

The Secretary may define small providers using current ICC class definitions. The extra year for compliance for these providers acknowledges the increased burden that implementation of some accessibility requirements could have on operators with relatively small fleets.

Section 306(a)(2)(C) states that no regulations may require the installation of accessible restrooms in over-the-road buses if such installation would result in a loss of seating capacity. The term "seating capacity" has the same meaning discussed under section 305—a reduction in the number of seats in which passengers can ride comfortably.

Section 306(a)(3) requires that the regulations issued shall include standards applicable to facilitaties and vehicles covered by sections 302(b)(2) and 304.

Section 306(b) specifies that no later than one year after the date of the enactment of the Act, the Attorney General must issue regulations in an accessible format to carry out the remaining provisions of this title not referred to in subsection (a) that include

standards applicable to facilities and vehicles covered under section 302.

Section 306(c) states that standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504 of this Act. Section 504 of the Act requires ATBCB, within 6 months after the enactment of this Act, to issue minimum guidelines to supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of title II and III. The guidelines shall establish additional requirements, consistent with this Act, to ensure that buildings, facilities, and vehicles are accessible, in terms of architecture and design, transportation, and communications, to individuals with disabilities.

The regulations issued pursuant to this section must include a requirement that wheelchair lifts and other boarding assistance devices be maintained in working order and that, when operational and when needed, they be deployed at the request of an individual with a disability.

SECTION 307. EXEMPTIONS FOR PRIVATE CLUBS AND RELIGIOUS ORGANIZATIONS

This section exempts private clubs and religious organizations from coverage under the Act.

SECTION 308. ENFORCEMENT

This section provides that the remedies and procedures of title II of the Civil Rights Act of 1964 are available under this title and provides for enforcement by the Attorney General.

SECTION 309. EFFECTIVE DATE

This section provides that, unless specifically provided otherwise, the provisions of the Act take effect 18 months after the date of enactment of the Act.

TITLE IV—TELECOMMUNICATIONS RELAY SERVICES

SECTION 401. TELECOMMUNICATIONS SERVICES FOR HEARING IMPAIRED AND SPEECH IMPAIRED INDIVIDUALS

This section specifies that a common carrier that offers telephone services to the general public must also provide interstate or intrastate telecommunication relay services so that such services provide individuals who use non-voice terminal devices because of their disabilities opportunities for communication that are equivalent to those provided to their customers who are able to use voice telephone services.

TITLE V—MISCELLANEOUS PROVISIONS

SECTION 501. CONSTRUCTION

This section explains the relationship between section 504 of the Rehabilitation Act of 1973 and this Act and the relationship between this Act and State laws that provide greater protection for

the rights of individuals with disabilities. This Act shall not be construed as regulating the underwriting, classifying or administering of insurance risks.

SECTION 502. PROHIBITION AGAINST RETALIATION AND COERCION

This section includes an anti-retaliation provision and a prohibition against interference, coercion or intimidation.

SECTION 503. STATE IMMUNITY

This section makes it clear that States are not immune under the 11th Amendment for violations of the Act.

SECTION 504. GUIDELINES BY ATBCB

This section directs the Architectural and Transportation Barriers Compliance Board (ATBCB) to issue minimum guidelines consistent with the Act.

SECTION 505. ATTORNEY'S FEES

This section specifies that in any action or administrative proceeding commenced under the Act, the court, or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

SECTION 506. TECHNICAL ASSISTANCE

This section includes a technical assistance provision which directs the Attorney General, in consultation with the Chairman of the Equal Employment Opportunity Commission, the Secretary of Transportation, the National Council on Disability, the Chairperson of the Architectural and Transportation Barriers Compliance Board, and the Chairman of the Federal Communications Commission to develop a plan to assist entities covered under the Act, along with other executive agencies and commissions, to understand their responsibilities under the Act.

SECTION 507. FEDERAL WILDERNESS AREAS

This section requires a study on wilderness designations and wilderness land management practices with regard to the use of wilderness areas by individuals with disabilities.

SECTION 508. TRANSVESTITES

This section states that the term "disability" shall not apply to an individual solely on the basis of transvestitism.

SECTION 509. MANDATING THE COVERAGE OF CONGRESS

This section mandates the coverage of Congress under the Act.

SECTION 510. ILLEGAL DRUG USE

This section makes it clear that current users of illegal drugs are not protected from actions based on their current use of illegal drugs.

SECTION 511. DEFINITIONS

This section states that under the Act, the term "disability" does not include "homosexuality", "bisexuality" "transvestitism", "pedophilia", "transsexualism", "exhibitionism", "voyeurism", "compulsive gambling", "kleptomania", "pyromania", "gender identity disorders", "current psychoactive substance use disorders", "current psychoactive substance-induced organic mental disorders", as defined by DSM-III-R which are not the result of medical treatment, or other sexual behavior disorders.

SECTION 512. AMENDMENTS TO THE REHABILITATION ACT

This section includes provisions clarifying actions permitted or prohibited with regard to individuals using alcohol or illegal drugs.

SECTION 513. SEVERABILITY

This section provides severability protection for the various provisions of the Act.

COMPLIANCE WITH CLAUSE 2(l) OF RULE XI OF THE RULES OF THE HOUSE OF REPRESENTATIVES

(1) With reference to clause 2(l)(3)(A) of Rule XI of the Rules of the House of Representatives, no separate findings or recommendations have been formally issued on the subject matter of this legislation by the Subcommittee on Investigations and Oversight. The Subcommittee on Surface Transportation held hearings on the subject matter which resulted in Titles II and III of the reported bill.

(2) With respect to Clause 2(l)(3)(B) of Rule XI of the Rules of the House of Representatives, the bill, as reported, does not provide new budget authority or increased tax expenditures. Accordingly, a statement pursuant to section 308(a) of the Congressional Budget Act is not required.

(3) Pursuant to Clause 2(l)(3)(D) of Rule XI of the Rules of the House of Representatives, no report has been submitted by the Committee on Government Operations pertaining to this subject matter.

(4) With respect to clause 2(l)(3)(C) of Rule XI of the Rules of the House of Representatives, the Committee has received the following report prepared by the Congressional Budget Office under section 403 of the Congressional Budget Act.

The report is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 24, 1990.

Hon. GLENN M. ANDERSON,
Chairman, Committee on Public Works and Transportation,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate of H.R. 2273, the Americans with Disabilities Act of 1990, as ordered reported by the Committee on Public Works and Transportation on April 3, 1990.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 2273.
2. Bill title: Americans with Disabilities Act of 1990.
3. Bill status: As orderd reported by the House Committee on Public Worls and Transportation on April 3, 1990.
4. Bill purpose: To prohibit discrimination against people with disabilities in areas such as employment practices, public accommodations and services, transportation services and telecommunication services.
5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1991	1992	1993	1994	1995
Estimated authorization level	5	6	19	31	31
Estimated outlays	5	6	19	31	31

Basis of estimate

Equal Employment Opportunities Commission (EEOC). Title I—Employment—would prohibit discrimination by employers against qualified individuals with disabilities. H.R. 2273 would require the EEOC to issue regulations to carry out Title I and to provide for enforcement of the provisions. Although no specific authorization level is stated in the bill, CBO estimates the cost of these activities would be $1 million in fiscal year 1991, $2 million in fiscal year 1992, $15 million in fiscal year 1993, and $27 million annually in fiscal years 1994-95. This estimate is based on the EEOC's past experience with enforcing civil rights standards and assumes that approximately 259 additional full-time equivalent employees would be needed for the Commission's 50 field offices and that approximately 58 additional staff would be needed for the EEOC headquarters.

Department of Transportation. H.R. 2273 would direct the Secretary of Transportation to issue regulations including standards applicable to the facilities and vehicles covered by these provisions. CBO estimates that the cost to the federal government of developing these regulations would be about $0.5 million in fiscal year 1991. In addition, the federal goverment might bear some part of the costs of making transit services accessible to the handicapped, which are discussed below. The capital and operating costs of most mass transit systems are heavily subsidized by the federal government through grant by the Urban Mass Transportation Administration. We cannot predict the extent to which these grants might be increased to compensate for the additional costs attributable to H.R. 2273.

Architectural and Transportation Barriers Compliance Board. H.R. 2273 would require the board to issue minimum guidelines

that would supplement existing minimum guidelines for accessible design of buildings, facilities and vehicles. Although no specific authorization level is stated in the bill, CBO estimates the cost of these guidelines would be $0.2 million in fiscal year 1991. This estimate assumes salaries and expense costs of $104,000 and research contract costs of $80,000. Although the bill does not state specifically that the guidelines should be maintained, the board currently maintains the existing guidelines and most likely would maintain the new guidelines. CBO estimates the cost of maintaining the guidelines would be $0.2 million every other year beginning in fiscal year 1992.

Office of Technology Assessment (OTA). The OTA would be required to undertake a study to determine (1) the needs of individuals with disabilities with regard to buses and (2) a cost-effective method for making buses accessible and usable by those with disabilities. In conjunction with this study, the OTA is directed to establish an advisory committee to assist with and review the study. Although no specific authorization level is stated in the bill, CBO estimates the cost of the study and advisory committee would be $0.2 million in fiscal year 1991, $0.3 million in 1992, and $0.1 million in 1993. This estimate is based upon the assumption that the OTA will not have to conduct significant additional field research.

Department of Justice. H.R. 2273 also would require the Attorney General to develop regulations to prohibit discrimination in public services and to investigate alleged violations of public accommodation provisions, which would include undertaking periodic reviews of compliance of covered entities under Title III. These regulations would ensure that a qualified individual with a disability would not be excluded from participation in, or denied benefits by a department, agency, special purpose district or other instrumentality of a state or local government. We estimate the cost of these activities would be $3 million in fiscal year 1991 and $4 million annually in fiscal years 1992-1995.

Federal Communications Commission (FCC). H.R. 2273 requires the FCC to prescribe and enforce regulations with regard to telecommunications relay services. These regulations include: (1) establishing functional regulations, guidelines and operations for telecommunications relay services, (2) establishing minimum standards that shall be met by common carriers, and (3) ensuring that users of telecommunications relay services pay rates no greater than rates paid for functionally equivalent voice communication services with respect to duration of call, the time of day, and the distance from point of origination to point of termination. While no authorization level is stated, CBO estimates the cost of developing and enforcing these regulations to be $0.1 million in fiscal year 1991, negligible in fiscal year 1992, $0.2 million in 1993, $0.2 million in 1994, and $0.1 million in 1995. The FCC anticipates a lull in fiscal year 1992 because the states would be designing telecommunication relay systems and there wouldn't be much FCC involvement. During fiscal years 1993 and 1994 the certification and evaluation of state programs would occur.

National Council on Disability. H.R. 2273 would require the council to conduct a study on the effect that wilderness land management practices have on the ability of individuals with disabil-

ities to use and enjoy the National Wilderness Preservation System. Although no authorization level is stated, CBO estimates the cost of this study would be $0.2 million in fiscal year 1991 and $0.1 million in fiscal year 1992.

Other Possible Effects. In addition to the federal costs of establishing and enforcing new regulations, H.R. 2273 could also affect the federal budget indirectly through changes in employment and earnings. If employment patterns and earnings were to change, both federal spending and federal revenues could be affected. There is, however, insufficient data to estimate these secondary effects on the federal budget.

6. Estimated cost to State and local governments: Enactment of H.R. 2273 would result in substantial costs for state and local governments, but CBO cannot estimate the total impact with any certainty. Most of these costs would involve actions required to make public transit systems accessible to the handicapped. In addition, some local governments might incur additional costs to make newly-constructed public buildings accessible, as required by this bill, but most already face similar requirements.

Public Buildings. H.R. 2273 would mandate that newly constructed state and local public buildings be made accessible to the handicapped. All states currently mandate accessibility in newly-constructed, state-owned public buildings and therefore would incur little or no costs if this bill were to be enacted. It is possible, however, in rare cases, for some local governments not to have such law. These municipalities would incur additional costs for making newly-constructed, locally-owned public buildings accessible if this bill were to become law. According to a study conducted by the Department of Housing and Urban Development in 1978, the cost of making a building accessible to the handicapped is less than one percent of total construction costs if the accessibility features are included in the original building design. Otherwise, the costs could be much higher.

Public Transit. CBO cannot provide a comprehensive analysis of the impact of H.R. 2273 on mass transit costs of state and local governments. The scope of the bill's requirements in this area is very broad, many provisions are subject to interpretation, and the potential effects on transit systems are significant and complex. While we have attempted to discuss the major potential areas of cost, we cannot assign a total dollar figure to these costs.

H.R. 2273 would require that all new buses and rail vehicles be accessible to handicapped individuals, including those who use wheelchairs, and that public transit operators offer paratransit services as a supplement to fixed route public transportation. In addition, the bill includes a number of requirements relating to the accessibility of mass transportation facilities. Specifically, all new facilities, alterations to existing facilities, intercity rail stations, and key stations in rapid rail, commuter rail, and light rail systems would have to be accessible to handicapped persons.

Bus and Paratransit Services—CBO estimates that it would cost between $20 million and $30 million a year over the next several years to purchase additional lift-equipped buses as required by H.R. 2273. Additional maintenance costs would increase each year as

lift-equipped buses are acquired and would reach $15 million by 1995. The required paratransit systems would add to those costs.

Based on the size of the current fleet and on projections of the American Public Transit Association (APTA), CBO expects that public transit operators will purchase about 4,300 buses per year, on average, over the next five years. About 38 percent of the existing fleet of buses is currently equipped with lifts to make them accessible to handicapped individuals and, based on APTA projections, we estimate that an average of 55 percent to 60 percent of future bus purchases will be lift-equipped in the absence of new legislation. Therefore, this bill would require additional annual purchases of about 1,800 lift-equipped buses. Assuming that the added cost per bus for a lift will be $10,000 to $15,000 at 1990 prices, operators would have to spend from $20 million to $30 million per year, on average, for bus acquisitions as a result of this bill.

Maintenance and operating costs of lifts have varied widely in different cities. Assuming that additional annual costs per bus average $1,500, we estimate that it would cost about $2 million in 1991, increasing to $15 million in 1995, to maintain and operate the additional lift-equipped buses required by H.R. 2273.

In addition, bus fleets may have to be expanded to make up for the loss in seating capacity and the increase in boarding time needed to accommodate handicapped persons. The cost of expanding bus fleets is uncertain since the extent to which fleets would need to be expanded depends on the degree to which handicapped persons would use the new lift-equipped buses. If such use increases significantly, added costs could be substantial.

These costs are sensitive to the number of bus purchases each year, which may vary considerably. In addition, these estimates reflect total costs for all transit operators, regardless of size. Costs may fall disproportionately on smaller operators, who are currently more likely to choose options other than lift-equipped buses to achieve handicapped access.

The bill also requires transit operators to offer paratransit or other special transportation services providing a level of service comparable to their fixed route public transportation to the extent that such services would not impose an "undue financial burden." Because we cannot predict how this provision will be implemented, and because the demand for paratransit services is very uncertain, we cannot estimate the potential cost of the paratransit requirement, but it could be significant. The demand for paratransit services probably would be reduced by the greater availability of lift-equipped buses.

New regulations recently proposed by the Department of Transportation concerning bus and paratransit services include requirements much the same as those in H.R. 2273. Should these proposed rules become final in their current form, the mandates of the bill would have much less effect.

Transit Facilities—We expect that the cost of compliance with the provisions concerning key stations would be significant for a number of transit systems, and could total several hundred million dollars (at 1990 prices) over 30 years. The precise level of these costs would depend on future interpretations of the bill's require-

ments and on the specific options chosen by transit systems to achieve accessibility. The costs properly attributable to this bill would also depend on the degree to which transit operators will take steps to achieve accessibility in the absence of new legislation.

In 1979, CBO published a study, (Urban Transportation for Handicapped Persons: Alternative Federal Approaches, November 1979), that outlined the possible costs of adapting rail systems for handicapped persons. In that study, CBO estimated that the capital costs of adapting key subway, commuter and light rail stations and vehicles for wheelchair users would be $1.1 billion to $1.7 billion, while the additional annual operating and maintenance costs would be $14 million to $21 million.

Based on a 1981 survey of transit operators, the Department of Transportation has estimated that adapting existing key stations and transit vehicles would require additional capital expenditures of $2.5 billion over 30 years and would result in additional annual operating costs averaging $57 million (in 1979 dollars) over that period. Many groups representing the handicapped asserted that the assumptions and methodology used by the transit operators in this survey tended to overstate these costs severely. The department estimated that the cumulative impact of using the assumptions put forth by these groups could lower the total 30-year costs to below $1 billion.

CBO believes that the figures in both these studies significantly overstate the cost of the requirements of H.R. 2273, because, in the intervening years, several of the major rail systems have begun to take steps to adapt a number of their existing stations for handicapped access. In addition, it seems likely that the number of stations that would be defined as "key" under this bill would be much lower than that assumed in either of those studies. Furthermore, the Metropolitan Transit Authority in New York and the Southeastern Pennsylvania Transportation Authority in Philadelphia, two large rail systems, have entered into settlement agreements with handicapped groups that include plans for adaptation of key stations. These plans would probably satisfy the bill's requirement for accessibility of key stations. Other rail systems are also taking steps to make existing stations accessible. Therefore, we expect that the cost of the bill's requirements concerning key stations would probably not be greater than $1 billion (in 1990 dollars) and might be considerably less.

7. Estimate comparison: None.

8. Previous CBO estimate: CBO prepared an estimate of S. 933, Americans with Disabilities Act of 1989, as ordered reported by the Senate Committee on Labor and Human Resources on August 2, 1989. We prepared an estimate of H.R. 2273, Americans with Disabilities Act of 1989, as ordered reported by the Committee on Education and Labor on November 14, 1989. We also prepared an estimate of H.R. 2273, Americans with Disabilities Act of 1990, as ordered reported by the House Committee on Energy and Commerce on March 13, 1990. The estimates in this bill are similar to those of the Education and Labor and Energy and Commerce versions of H.R. 2273 and are substantially different from those in the Senate bill.

9. Estimate prepared by: Cory Leach and Marjorie Miller.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

COST OF LEGISLATION

In accordance with rule XIII(7) of the Rules of the House of Representatives, the cost to the United States in carrying out H.R. 2273, as reported, in fiscal year 1990, and in each of the five following fiscal years, is estimated by the Committee to be costs which appear in the report of the Congressional Budget Office.

VOTE

The Committee ordered the bill reported by a vote of 45 ayes and 5 noes.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

* * * * * * *

APPLICATION OF ACT

SEC. 2. (a) * * *

(b) Except as provided in [section 224] *sections 223, 224, and 225 and subject to the provisons of section 301 and title VI, nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier, or (2) any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (3) any carrier engaged in interstate or foreign communication solely through connection by radio, or by wire and radio, with facilities, located in an adjoining State or in Canada or Mexico (where they adjoin the State in which the carrier is doing business), of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (4) any carrier to which clause (2) or clause (3) would be applicable except for furnishing interstate mobile radio communication service or radio communication service to mobile stations on land vehicles in Canada or Mexico; except that sections 201 through 205 of this Act, both inclusive, shall, except as otherwise provided therein, apply to carriers described in clauses (2), (3), and (4).*

* * * * * * *

TITLE II— COMMON CARRIERS

* * * * * * *

SPECIAL PROVISIONS RELATING TO TELEPHONE COMPANIES

SEC. 221. (a) * * *

(b) Subject to the provisions of [section 301] *sections 225 and 301,* nothing in this Act shall be construed to apply, or give the Commission jurisdiction, with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with wire, mobile, or point-to-point radio telephone exchange service, or any combination thereof even though a portion of such exchange service constitutes interstate or foreign communication, in any case where such matters are subject to regulation by a State commission or by local governmental authority.

* * * * * * *

SEC. 225. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

(a) DEFINITIONS.—As used in this section—

(1) COMMON CARRIER OR CARRIER.—The term "common carrier" or "carrier" includes any common carrier engaged in interstate communication by wire or radio as defined in section 3(h), any common carrier engaged in intrastate communication by wire or radio, and any common carrier engaged in both interstate and intrastate communication, notwithstanding sections 2(b) and 221(b).

(2) TDD.—The term "TDD" means a Telecommunications Device for the Deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

(3) TELECOMMUNICATIONS RELAY SERVICE.—The term "telecommunications relay services" means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

(b) AVAILABILITY OF TELECOMMUNICATIONS RELAY SERVICE.—

(1) IN GENERAL.—In order to carry out the purposes established under section 1, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

(2) REMEDIES.—For purposes of this section, the same remedies, procedures, rights, and obligations under this Act that are applicable to common carriers engaged in interstate communi-

cation by wire or radio are also applicable to common carriers engaged in intrastate communication by wire or radio and common carriers engaged in both interstate and intrastate communication by wire or radio.

(c) PROVISION OF SERVICE.—Each common carrier providing telephone voice transmission services shall provide telecommunications relay services individually, through designees, or in concert with other carriers not later than 3 years after the date of enactment of this section.

(d) REGULATIONS.—

(1) IN GENERAL.—The Commission shall, not later than 1 year after the date of enactment of this section, prescribe regulations to implement this section, including regulations that—

(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

(B) establish minimum standards that shall be met by common carriers in carrying out subsection (c);

(C) require that telecommunications relay services operate every day for 24 hours per day;

(D) require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

(E) prohibit relay operators from refusing calls or limiting the length of calls that use telecommunications relay services;

(F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and

(G) prohibit relay operators from intentionally altering a relayed conversation.

(2) TECHNOLOGY.—The Commission shall ensure that regulations prescribed to implement this section encourage the use of existing technology and do not discourage or impair the development of improved technology.

(3) JURISDICTIONAL SEPARATION OF COSTS.—

(A) IN GENERAL.—The Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

(B) RECOVERING COSTS.—Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from the interstate jurisdiction and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction.

(C) JOINT PROVISION OF SERVICES.—To the extent interstate and intrastate common carriers jointly provide telecommunications relay services, the procedures established in section 410 shall be followed, as applicable.

(4) FIXED MONTHLY CHARGE.—The Commission shall not permit carriers to impose a fixed monthly charge on residential

customers to recover the costs of providing interstate telecommunication relay services.

(5) UNDUE BURDEN.—If the Commission finds that full compliance with the requirements of this section would unduly burden one or more common carriers, the Commission may extend the date for full compliance by such carrier for a period not to exceed 1 additional year.

(e) ENFORCEMENT.—

(1) IN GENERAL.—Subject to subsections (f) and (g), the Commission shall enforce this section.

(2) COMPLAINT.—The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date such complaint is filed.

(f) CERTIFICATION.—

(1) STATE DOCUMENTATION.—Each State may submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services.

(2) REQUIREMENTS FOR CERTIFICATION.—After review of such documentation, the Commission shall certify the State program if the Commission determines that the program makes available to hearing-impaired and speech-impaired individuals either directly, through designees, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such State in a manner that meets the requirements of regulations prescribed by the Commission under subsection (d).

(3) METHOD OF FUNDING.—Except as provided in subsection (d), the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunication relay services.

(4) SUSPENSION OR REVOCATION OF CERTIFICATION.—The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted.

(g) COMPLAINT.—

(1) REFERRAL OF COMPLAINT.—If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) is in effect, the Commission shall refer such complaint to such State.

(2) JURISDICTION OF COMMISSION.—After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if—

(A) final action under such State program has not been taken on such complaint by such State—

(i) within 180 days after the complaint is filed with such State; or

(ii) within a shorter period as prescribed by the regulations of such State; or

(B) the Commission determines that such State program is no longer qualified for certification under subsection (f).

REHABILITATION ACT OF 1973

* * * * * * *

DEFINITIONS

SEC. 7. For the purposes of this Act:
(1) * * *

* * * * * * *

(8)(A) * * *

(B) [Subject to the second sentence of this subparagraph, the] *The* term "individual with handicaps" means, for purposes of titles IV and V of this Act, any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. [For purposes of sections 503 and 504 as such sections relate to employment, such term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.] *Notwithstanding any other provision of law, but subject to subparagraph (D) with respect to programs and activities providing education and the last sentence of this paragraph, the term "individual with a handicap" does not include any individual who currently uses illegal drugs, except that an individual who is otherwise handicapped shall not be excluded from the protections of this Act if such individual also uses or is also addicted to drugs. For purposes of programs and activities providing medical services, an individual who currently uses illegal drugs shall not be denied the benefits of such programs or activities on the basis of his or her current use of illegal drugs if he or she is otherwise entitled to such services.*

* * * * * * *

(D) For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any handicapped student who currently uses drugs or alcohol to the same extent that such disciplinary action is taken against nonhandicapped students. Furthermore, the due process procedures at 34 CFR 104.36 shall not apply to such disciplinary actions.

(E) For purposes of section 503 and 504 of this Act as such sections relate to employment, the term "individual with handicaps" does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employemnt, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.

(22) The term "illegal drugs" means controlled substances, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), the possession or distribution of which is unlawful under such Act. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or

other uses authorized by the Controlled Substances Act or other provisions of Federal law.

* * * * * * *

ADDITIONAL VIEWS OF MR. JOHN PAUL HAMMERSCHMIDT, MR. ARLAN STANGELAND, MR. WILLIAM F. CLINGER, JR., MR. JIM LIGHTFOOT, MR. DENNIS HASTERT, MR. JAMES M. INHOFE, MR. CASS BALLENGER, MR. BILL EMERSON, MR. JOHN J. DUNCAN, JR., MR. BILL GRANT AND MS. SUSAN MOLINARI

Legislation opening doors to opportunity and independence for millions of Americans has received its long-awaited and deserved attention in the halls of the 101st Congress. The Public Works and Transportation Committee has had a significant role in the effort, and after many months of deliberations, it is with a sense of pride and purpose that we have been able to vote in favor of reporting H.R. 2273, as amended, the Americans with Disabilities Act, to the House of Representatives.

Transportation holds the key to opportunity for millions of disabled Americans. No longer will the problem of "how to get there" prevent the disabled from participating in recreational activities, running errands, visiting friends, and most of all, taking pride in a job well done. Our avenues, subways, railways and waterways will carry the disabled all across this great nation so that they can live normal and productive lives.

The legislation we have reported represents a great effort to achieve these goals. We have worked long and hard to balance the needs of the disabled with the impacts on providers. We have tried to keep the objectives of mobility first and foremost in our minds in considering the issues raised before us. Many significant provisions of the legislation, particularly those regarding private transportation, have met those goals, and it is these provisions for which we have registered our full support. However, in the legislative process, we know that to arrive at consensus, we sometimes must forgeo all that we would like to achieve, and unfortunately, it is for certain other provisions in the bill, as well as omissions, that we must express our concerns.

The objective of the Americans with Disabilities Act is to provide mobility for all disabled Americans. The legislation, however, does not guarantee the best mobility for all the disabled. Those disabled Americans who live in smaller or rural areas may find that the Americans with Disabilities Act brings them less mobility, not more.

The bill mandates lifts on every new public transit bus. It also mandates comparable paratransit, except that with regard to response time, the service must be comparable to the extent practicable. The impact of both of these requirements, particularly on smaller transit systems, will be significant. In addition, in smaller areas, the disabled population does not exist in numbers great enough to justify the capital expenditure of lifts. Even in large metropolitan areas where disabled populations are higher, the rid-

ership figures are low. Seattle, Washington, quotes the highest ridership: one lift use per bus every other day. Significant barriers to lift use exist in every city, whether it be the lack of curb cuts, hilly terrain, sheer distance from the nearest bus stop, or severe weather conditions. Very simply, an adequate paratransit system often provides better mobility to the disabled, particularly in less populated areas, than a lift-equipped fixed route system. It came as no surprise that many disabled across our country prefer it.

We are concerned that the bill makes no allowance for flexibility so that local communities can decide what method of accessibility works best for them. We believe a Federal mandate requiring one solution for all communities is long on theory and short on reality.

A significant amount of paratransit service is currently provided by social service agencies and private non-profit entities. The Department of Health and Human Services alone estimates that transportation represents approximately $1 billion of its total program budgets. The bill puts the legal responsibility for paratransit service on the public transit authority. We are concerned that this linkage will provide a great incentive for other paratransit providers to discontinue their service and devote their limited resources to their basis program offerings rather than transportation service. After all, the ADA lays the burden at someone else's doorstep. In fact, this has already happened to some degree under the existing 504 law and regulations. Transit agencies simply cannot feasibly pick up all of the service that is currently provided, so, once again, some unfortunate disabled Americans will find that the ADA brings them less mobility, not more.

Another concern relates to the bill's effective dates. In the public transportation title, the Department of Transportation is given 12 months to issue complex regulations governing the provision of paratransit service. The law's requirements go into effect 18 months after enactment. What will likely occur is that the effective date will arrive without the issuance of final regulations, leaving transit authorities in the dark regarding their specific responsibilities and subject to discrimination claims. Handicapped rulemakings in the Department of Transportation are traditionally handled through the administrative procedure of a regulatory negotiation rather than the normal notice and comment rulemaking process. Regulatory negotiation involves bringing all affected parties together and negotiating what the regulations should entail. The process is favored by the disability community because there is an enhanced opportunity to express views through this process. By the very nature of the process, however, more time is taken to arrive at conclusions. With the range and complexity of issues that must be addressed in a regulation governing paratransit service, and because of the desired use of a regulatory negotiation, we do not believe 12 months is a reasonable amount of time for the Department to act. The bill will penalize transit authorities for agency delay and result in unnecessary litigation, increased transit costs and less mobility and service. We do not believe this was the intent of the ADA.

A concern with the entire bill is its underlying vagueness and confusing new legal terms which will inevitably cause the law to be interpreted by the courts. With legislation that is this significant,

it is unfortunate that major provisions will be decided in the judicial forum rather than by the Congress. For example, provision of paratransit service is limited by the concept of "undue financial burden" The Department of Transportation must issue regulations to determine what constitutes an undue financial burden with very little statutory guidance from the Congress. Invariably, regulations will be challenged and different courts will issue conflicting decisions. This causes even more significant compliance burdens for those attempting to comply with law that is ever changing. We believe this is an unfortunate outcome for such an important piece of legislation.

The bill contains a well reasoned approach to accessibility with the private over-the-road bus industry which we believe represents a full and fair balance of the needs of the disabled and the impacts on the provider. In the spirit of cooperation and compromise, we were able to work out a solution amenable to all parties, which we fully support.

Despite its flaws, the Americans with Disabilities Act is indeed landmark legislation. It is our hope that it will not only open doors and mainstream those who have waited too long, but will serve to topple the true divider amongst ourselves, the disabled attitudes in those of us deemed "abled"

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MINORITY VIEWS OF MR. BUD SHUSTER, MR. BOB McEWEN, MR. RON PACKARD, MR. MEL HANCOCK, AND MR. CHRISTOPHER COX

We strongly support increased mobility for disabled Americans, but believe the mandates and requirements found in titles II and III of this bill will have detrimental effects on transportation of all Americans, able-bodied and disabled.

This legislation will result in the loss of service to residents of small towns and rural areas as transit agencies seek to cope with the onerous financial burdens imposed upon them by the ADA, not to mention the increased costs that will be borne by all transit riders for equipment and facilities that will be used rarely or not at all. This bill will impact most adversely upon the elderly population that will grow steadily larger as the median age increases. They will be denied needed transportation services because of their ineligibility under the legislation.

We have never opposed civil rights for disabled Americans. Rather, we have supported and attempted to work for a balanced, rational approach to meeting the access needs of all Americans, disabled and able-bodied. During hearings on this legislation we sought to examine the access needs of the disabled and the shortfalls of our existing transportation systems. Testimony during the hearings brought out very real needs for disabled Americans, but it also demonstrated a commitment among many transit agencies to meet those needs without further government interference and mandates. For example, the City of St. Cloud, Minnesota is meeting the needs of their disabled population through a comprehensive paratransit service developed by the transit authority and disabled community. They testified that the ADA will require them to cut their paratransit service and install lift-equipped buses that the disabled community doesn't want.

At the mark-up of this bill several amendments were offered to address these important problems with the bill. Unfortunately, few of the issues raised in the hearings were resolved. As such, we have major concerns about this legislation which are detailed below.

TITLE II, PUBLIC SERVICES

Title II extends a general prohibition of discrimination to public services. It further requires in Section 203, that every new transit bus purchased for public use be accessible to the disabled (lift equipment). Because rural and small cities generally experience lower ridership figures and have lesser resources to draw upon than their larger cousins, this mandate wil have a negative impact on transit entities and service in these areas.

The cost of a new transit bus is approximately $150,000-$175,000. For a transit agency to equip that bus with a wheelchair lift will

require an additional outlay of between $12,000–$15,000 with its attendant average annual maintenance costs of $2000, amounting to a 10 percent surcharge per bus to the transit agency. Total aggregate annual cost to transit authorities to implement the lift mandate will amount to approximately $30 million a year, when federal transit assistance has been cut 50 percent in real dollar terms in the last 10 years.

When we examine ridership figures for lift-equipped bus fleets we find that they are startlingly low. In Seattle, Washington, for example, the city with the highest reported disabled ridership figures in the nation (their fleet is 80 percent lift equipped), use of lifts averaged .6 lift use per lift-equipped bus per day. Milwaukee, Wisconsin had 50 percent of its fleet accessible and over a three year period experienced disabled ridership figures of .008 lift use per bus per day. They found that fewer than 15 different people used the accessible buses during the three year period. (Milwaukee's estimated wheelchair-bound population is estimated at 7000). New York City has the nation's largest bus fleet with 4200 buses and is nearly 100 percent lift-equipped. The city reports average disabled ridership figures of one lift use per every 19 buses; less than Seattle.

What transit authorities need is the flexibility to meet the access needs of the disabled in their community. Flexibility, rather than an absolute mandate as contained in this legislation would permit local communities—who generally know their ridership needs better than the federal government—the ability of developing a transportation system that provides accessibility to the disabled in the form they want it. A lift-equipped fixed route bus fleet does not result in mobility for all disabled Americans in all areas.

Many disabled and elderly individuals cannot travel to and from a bus stop because of distance, lack of curb cuts, hilly terrain or adverse weather conditions. This legislation, however, would exclude them from eligibility from their only transportation alternative, paratransit service. Only if a disabled person (the elderly population is excluded) cannot actually board, ride or disembark from a lift-equipped bus are they eligible for the door-to-door paratransit service. Their ability to get to the bus stop is not considered a factor.

A limited waiver for small towns and rural areas under 200,000 in population would allow areas that will be hardest hit by this legislation to have the flexibility they need to meet the access needs of the disabled and elderly without disruption and cuts in service. A waiver of this scope would be very narrow. Transit operators in urbanized areas under 200,000 in poulation represent only 2.2 percent of all transit passenger miles. In addition, a waiver would have the added benefit of requiring consultation with the disabled in the community assuring a local, acceptable approach for all parties.

Section 204 of the legislation contains a requirement that any public entity that operates a fixed route system must also provide paratransit service to eligible disabled persons. This section is one of the most important transportation provisions of the bill because there will always be those disabled that cannot use a fixed route system, even if that system is fully accessible. In fact, in many situ-

ations, paratransit meets the mobility needs of the disabled better than a lift on each and every transit bus. However, the paratransit provision contained in the ADA requires that paratransit services provided to the disabled community be comparable, except for response time, which is comparable to the extent practicable.

To require paratransit service to be truly comparable to a regular fixed-route bus service is of major concern to us. Truly comparable service is a very high standard, one which can hardly be met by the existing resources of transit authorities. No transit authority in the country will be able to meet this utopian level of service. A transit authority would have to offer paratransit service that is virtually equivalent to the regular fixed route service.

The cost of providing paratransit service at a comparable level to fixed-route service is unable to be quantified. The Congressional Budget Office and the General Accounting Office, after a request to estimate the cost of such service, reported back to the Congress that they were unable to even come up with an estimate of the cost such service would entail. We find it astounding that we are mandating requirements in the legislation for which costs are unknown. The limitation of "undue financial burden" contained in Section 204 will only result in continuous and quite likely successful suits against the transit agency to require paratransit service above their ability to provide. Moreover, the relief valve of "undue financial burden" will come into play increasingly often as transit authorities, faced with an absolute mandate of equipping every bus with a lift, attempt to shift already scarce resources from paratransit service to wheelchair lifts.

We must understand that paratransit service is not a civil right. It is a service provided to the disabled above and beyond anything an able-bodied person can receive. This service is more like an entitlement, much along the lines of the food stamp program. An able-bodied person that could not get to the bus has no right to this services, a service beyond the scope of a civil rights bill.

Recognizing that this should still be an integral part of a transit authority's commitment to service for those unable to use the fixed-route service, the addition of legislative language in the bill to limit an authority's standard of service to "comparable to the extent practicable" would certainly go far toward insuring that reasonable levels of service would be provided to those that need paratransit. While recognizing the tight fiscal constraints of many transit authorities.

Of additional concern to us is the lack of legislative language in Section 204 that would protect the transit authority, legally responsible to provide paratransit service under the ADA, from having to provide service for a discontinued private provider of paratransit services. The legal requirement that the transit authority be solely responsible for providing service, as in this legislation, places an incentive on the private provider to dump their service onto the transit authority.

In an age of tightening budgets, agencies are already looking to the local transit authorities to provide transportation for their beneficiaries so they can extend the reach of the budgets for basic programs. The result to which this dumping could potentially lead is staggering. Transportation services provided by the Department

of Health and Human Services alone are estimated to approach $1 billion annually. The Urban Mass Transportation Administration's 16(b)(2) program for comparison, which provides grants to private non-profit organizations serving the elderly and disabled, has a budget of only $35 million annually with which they provide over 20,000 special service vans for 3,500 non-profit agencies.

It is clear that some remedy must be extended to transit authorities or they will be faced with requirements for service, impossible for them to meet with their current limited resources. This situation is already occurring under the Rehabilitation Act of 1973.

Of less obvious concern, but none-the-less objectionable to us, are the effective dates of the ADA. The effective dates contained in the ADA generally require that the Department of Transportation issue regulations governing implementation of specific provisions within twelve months of enactment and sets the effective date for compliance with those regulations to 18 months after enactment.

An immediate problem arises under this requirement if the provisions of the ADA become effective 18 months after the date of enactment and the Department of Transportation has not yet issued the regulation governing their implementation. The transportation authorities will be forced to comply with the legislation without the benefit of regulatory guidance, leading, obviously, to lawsuits. Considering that these regulations will be extremely complex, especially those implementing the paratransit sections, the transit authority will need a minumum of six months after the regulations are issued in order to implement the requirements. Furthermore, since the regulations will most likley be done in a regulatory negotiation that brings all parties together at the table to develop the regulations and involves considerable more time than the normal rulemaking, there is simply not enough time in the bill language for DOT to complete the regulations.

A much more reasonable approach and one which we advocate is for DOT to be subject to a citizens suit that allows a person affected by the regulations—disabled or transit agency—to file suit in the federal district court against DOT if DOT fails to issue the required regulations on time. A provision such as this would give the district court the authority to issue an order requiring DOT to issue the regulations. This approach makes more sense as it penalizes the appropriate party (DOT) rather than the transit agency which has no control over the issuance of the regulations.

TITLE III

Of interest to us in title III of the bill are the provisions relating to private entities operating over-the-road buses. The bill requires that the Office of Technology Assessment undertake a three-year study to determine the access needs of disabled individuals as they relate to over-the-road buses and the most cost-effective methods of achieving accessibility to over-the-road buses. Following the completion of the study, the Secretary of DOT will issue regulations, taking into account the findings of the OTA study, relating to the accessibility for over-the-road buses. Large providers of service will have six years and small providers seven years from the date of enactment of the legislation to comply with the regulations.

The over-the-road bus provisions of this bill represent a compromise agreement developed by many different parties, including the disabled community and the over-the-road bus industry. This final version has been accepted by everyone and is an example of what can be accomplished by a bipartisan negotiating process. We strongly support this language.

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